2014
CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

Compiled Under the Supervision of the
Idaho Code Commission

R. DANIEL BOWEN
JEREMY P. PISCA ANDREW P. DOMAN
COMMISSIONERS

TITLE 18

Place this supplement in the pocket of the corresponding volume of the set

MICHIE

701 East Water Street
Charlottesville, VA 22902

www.lexisnexis.com

Customer Service: 1-800-833-9844

5042431

ISBN 978-0-672-83888-0 (Set)
ISBN 978-0-8205-8884-1

(Pub.42205)

PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

If you have any questions or suggestions concerning the Idaho Code, please write or call toll free 1-800-833-9844, fax toll free at 1-800-643-1280, or email us at customer.support@bender.com.

Visit our website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

LexisNexis
Attn: Customer Service
1275 Broadway
Albany, NY 12204-2694

ALWAYS CONSULT THE LATEST SUPPLEMENT IN CONNECTION WITH THE PERMANENT VOLUME

USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S.)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014

TITLE 18

CRIMES AND PUNISHMENTS

CHAPTER.

1. Preliminary Provisions, §§ 18-101A, 18-111, 18-113, 18-113A.
2. Persons Liable, Principals and Accessories, § 18-217.
5. Pain-Capable Unborn Child Protection Act, §§ 18-501 — 18-510.
6. Abortion and Contraceptives, §§ 18-604, 18-605, 18-609 — 18-609G, 18-611, 18-614 — 18-616.
9. Assault and Battery, §§ 18-902, 18-904, 18-910, 18-912, 18-915, 18-915C, 18-917A, 18-918, 18-920, 18-923.
13. Bribery and Corruption, §§ 18-1351, 18-1356, 18-1359.
15. Children and Vulnerable Adults, §§ 18-1501, 18-1502C, 18-1505 — 18-1507A, 18-1508A, 18-1509A.
16. Compounding Crimes, § 18-1601.
19. Corporations, § 18-1905.
23. Elections, §§ 18-2308, 18-2317, 18-2318, 18-2322.
24. Theft, § 18-2406.
25. Escape or Rescue of Prisoners, §§ 18-2501, 18-2503, 18-2505 — 18-2507, 18-2509 — 18-2511.
31. False Pretenses, Cheats and Misrepresentations, §§ 18-3122, 18-3124, 18-3125, 18-3126, 18-3126A, 18-3128.
32. Falsifying, Mutilating or Concealing Public Records or Written Instruments, § 18-3202.
33. Firearms, Explosives and Other Deadly Weapons, §§ 18-3302, 18-3302B, 18-3302H — 18-3302K, 18-3304 — 18-3306, 18-3309, 18-3312 — 18-3315B, 18-3317, 18-3318, 18-3319A, 18-3325.
36. Forgery and Counterfeiting, § 18-3613.
38. Gaming, §§ 18-3808 — 18-3810.
40. Homicide, §§ 18-4004A, 18-4006, 18-4007, 18-4017.
41. Indecency and Obscenity, §§ 18-4109, 18-4116.
43. Irrigation Works, §§ 18-4308, 18-4309.
46. Larceny and Receiving Stolen Goods, §§ 18-4616, 18-4621, 18-4626, 18-4629.
49. Lotteries, § 18-4907.
54. Perjury and Subornation of Perjury, § 18-5402.
56. Prostitution, §§ 18-5610, 18-5612, 18-5615 — 18-5631.
57. Public Funds and Securities, §§ 18-5701 — 18-5704.
61. Rape, §§ 18-6101, 18-6107, 18-6108, 18-6110.
64. Riot, Rout, Unlawful Assembly, Prize Fighting, Disturbing Peace, § 18-6409.
66. Sex Crimes, §§ 18-6602, 18-6608, 18-6609.
67. Communications Security, §§ 18-6711A, 18-6713.
68. Telegraph, Telephone and Electric Lines, § 18-6801.
69. Idaho Anti-Camcorder Piracy Act, §§ 18-6901 — 18-6905.
70. Trespass and Malicious Injuries to Property, §§ 18-7001, 18-7008, 18-7011, 18-7020, 18-7031, 18-7042.
80. Motor Vehicles, §§ 18-8001 — 18-8002A, 18-8003, 18-8004A, 18-8004C, 18-8005, 18-8006, 18-8008.
81. Terrorist Control Act, § 18-8105.
83. Sexual Offender Registration Notification and Community Right-To-Know Act, §§ 18-8302 — 18-8305, 18-8306 — 18-8312, 18-8314 — 18-8324, 18-8329 — 18-8331.
84. Juvenile Sex Offender Registration Notification and Community Right-To-Know Act, § 18-8409.
85. Idaho Criminal Gang Enforcement Act, §§ 18-8501 — 18-8506.
86. Human Trafficking, §§ 18-8601 — 18-8605.

CHAPTER 1

PRELIMINARY PROVISIONS

SECTION.

18-101A. Definitions.
18-111. Felony, misdemeanor and infraction defined.
18-113. Punishment for misdemeanor.
18-113A. Punishment for infraction.

18-101. Definition of terms.

JUDICIAL DECISIONS

ANALYSIS

Malice.
Willfully.

Malice.

In a first degree murder case, the trial court erred by improperly instructing the jury as to the definition of malice. The incorrect expansion of the definition of malice in the jury instructions lowered the state's burden of proof on that element of the offense. However, defendant was not entitled to post-conviction relief because the jury's determination that appellant's killing of the victim was premeditated negated any possibility of prejudice from the incorrect malice instruction. Sheahan v. State, 146 Idaho 101, 190 P.3d 920 (Ct. App. 2008).

Willfully.

There is nothing in the context of § 18-6409 that indicates a legislative intent for the word "wilfully" in that statute to have a meaning different from that provided by subsection 1 of this section. The statutory definition of "wilfully" provided by this section applies to the word "wilfully" in § 18-6409. State v. Poe, 139 Idaho 885, 88 P.3d 704 (2004).

Under subsection 1, the term "wilfully" is to be applied as that statute defines unless otherwise apparent from the context. State v. Sohm, 140 Idaho 458, 95 P.3d 76 (Ct. App. 2004).

Cited in: State v. Macias, 142 Idaho 509, 129 P.3d 1258 (Ct. App. 2005); State v. Tams, 149 Idaho 752, 240 P.3d 939 (Ct. App. 2010); State v. Skunkcap, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 55 (Ct. App. June 14, 2013).

18-101A. Definitions. — As used in titles 18, 19 and 20, Idaho Code, and elsewhere in the Idaho Code, unless otherwise specifically provided or unless the context clearly indicates or requires otherwise, the following terms shall be defined as follows:

(1) "Correctional facility" means a facility for the confinement of prisoners or juvenile offenders. The term shall be construed to include references to terms including, but not limited to, "prison," "state prison," "state penitentiary," "governmental detention facility," "penal institution (facility)," "correctional institution," "juvenile correctional center," "Idaho security medical program," "detention institution (facility)," "juvenile detention center (facility)," "county jail," "jail," "private prison (facility)," "private correctional facility," or those facilities that detain juvenile offenders pursuant to a contract with the Idaho department of juvenile corrections.

(2) "In-state prisoner" means any person who has been charged with or convicted of a crime in the state of Idaho or who is being detained pursuant to a court order, and

(a) Who is being housed in any state, local or private correctional facility, or

(b) Who is being transported in any manner within or through the state of Idaho.

(3) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of a county or city. The term shall include references to "county jail," or "jail." The term shall also include a private correctional facility housing prisoners under the custody of the state board of correction, the county sheriff or other local law enforcement agency.

(4) "Out-of-state prisoner" or "out-of-state inmate" means any person who is convicted of and sentenced for a crime in a state other than the state of

Idaho, or under the laws of the United States or other foreign jurisdiction, and

(a) Who is being housed in any state, local or private correctional facility in the state of Idaho, or

(b) Who is being transported in any manner within or through the state of Idaho.

(5) "Parolee" means a person who has been convicted of a felony and who has been placed on parole by the Idaho commission for pardons and parole or similar body of another state, the United States, or a foreign jurisdiction, and who is not incarcerated in any state, local or private correctional facility, and who is being supervised by employees of the Idaho department of correction.

(6) "Prisoner" means a person who has been convicted of a crime in the state of Idaho or who is being detained pursuant to a court order, or who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and

(a) Who is being housed in any state, local or private correctional facility, or

(b) Who is being transported in any manner within or through the state of Idaho.

The term shall be construed to include references to terms including, but not limited to, "inmate," "convict," "detainee," and other similar terms, and shall include "out-of-state prisoner" and "out-of-state inmate."

(7) "Private correctional facility" or "private prison (facility)" means a correctional facility constructed or operated in the state of Idaho by a private prison contractor.

(8) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design, design/building, acquisition, construction, construction/management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.

(9) "Probationer" means a person who has been placed on felony probation by an Idaho court, or a court of another state, the United States, or a foreign jurisdiction, and who is not incarcerated in any state, local or private correctional facility, and who is being supervised by employees of the Idaho department of correction.

(10) "Repeat offender" means, for the purposes of sections 18-8002, 18-8002A, 18-8004C, 18-8005 and 18-8008, Idaho Code, a person who has been convicted of driving while intoxicated or driving under the influence of alcohol and/or drugs more than once in any five (5) year period for the purposes of sections 18-8002A and 18-8004C, Idaho Code, or any ten (10) year period for the purposes of sections 18-8002 and 18-8005, Idaho Code.

(11) "State correctional facility" means a facility for the confinement of prisoners, owned or operated by or under the control of the state of Idaho. The term shall include references to "state prison," "state penitentiary" or "state penal institution (facility)." The term shall also include a private

correctional facility housing prisoners under the custody of the board of correction.

(12) "Supervising officer" means an employee of the Idaho department of correction who is charged with or whose duties include supervision of felony parolees or felony probationers.

(13) "Juvenile offender" means a person younger than eighteen (18) years of age or who was younger than eighteen (18) years of age at the time of any act, omission, or status for which the person is being detained in a correctional facility pursuant to court order.

History.
I.C., § 18-101A, as added by 2000, ch. 272, § 1, p. 786; am. 2005, ch. 177, § 1, p. 547; am. 2008, ch. 60, § 1, p. 151; am. 2014, ch. 63, § 1, p. 151.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 60, in subsection (1), in the first sentence, added "or juvenile offenders," and in the last sentence, inserted "'juvenile correctional center,' 'Idaho security medical program'" and "'juvenile detention center (facility)'," and added language beginning "or those facilities"; subdivided subsection (2), and therein in the introductory paragraph, inserted "charged with or" and "or who is being detained pursuant to a court order," and in subsection (2)(a), deleted "either incarcerated or on parole or probation for that crime or in custody for trial and sentencing, and who is" preceding "being housed"; subdivided subsection (4), and therein in the introductory paragraph, deleted "on parole or probation in Idaho or" preceding "being housed"; added subsection (5); subdivided subsection (6), and therein in the introductory paragraph, substituted "or who is being detained pursuant to a court order" for "and is either incarcerated or on parole or probation for that crime or in custody for trial and sentencing"; and added subsections (9), (11), and (12) and redesignated subsections accordingly.

The 2014 amendment, by ch. 63, inserted present subsection (10) and redesignated the subsequent subsections accordingly.

18-111. Felony, misdemeanor and infraction defined. — A felony is a crime which is punishable with death or by imprisonment in the state prison. An infraction is a civil public offense, not constituting a crime, which is punishable only by a penalty not exceeding three hundred dollars ($300) and for which no period of incarceration may be imposed. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the state prison is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the state prison.

History.
I.C., § 18-111, as added by 1972, ch. 336, § 1, p. 844; am. 1982, ch. 353, § 6, p. 874; am. 2014, ch. 236, § 1, p. 596.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 236, substituted "three hundred dollars ($300)" for "one hundred dollars ($100)" in the second sentence of the section.

18-113. Punishment for misdemeanor. — (1) Except in cases where a different punishment is prescribed in this code, every offense declared to

be a misdemeanor, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000), or by both.

(2) In addition to any other punishment prescribed for misdemeanors in specific statutes of the Idaho Code, the court may also impose a fine of up to one thousand dollars ($1,000). This paragraph shall not apply if the specific misdemeanor statute provides for the imposition of a fine.

History.
I.C., § 18-113, as added by 1972, ch. 336, § 1, p. 844; am. 1994, ch. 141, § 1, p. 315; am. 2005, ch. 359, § 1, p. 1133.

JUDICIAL DECISIONS

Judgment.
Although § 49-1401 did not prescribe the punishment for inattentive driving, § 18-113 defined the penalty for any misdemeanor not specifically authorized by statute, such that the crime of inattentive driving was punishable by 180 days in jail and a lesser offense could incur a greater penalty than the more serious offense; it was the prerogative of the legislature to assign the arguably greater penalty to inattentive driving, while simultaneously acknowledging it as a lesser offense. State v. Parker, 141 Idaho 775, 118 P.3d 107 (2005).

18-113A. Punishment for infraction. — Every offense declared to be an infraction is punishable only by a penalty not exceeding three hundred dollars ($300) as provided in this section and no imprisonment. The penalty for an infraction shall be:

(1) The amount set by statute;

(2) Subject to subsection (1) of this section, the amount set as a fixed penalty for that infraction as of January 1, 2014, by the Idaho supreme court infraction rule 9, excepting subsection (38) of infraction rule 9 for "other infractions";

(3) The amount set by city or county ordinance for which the city or county has authority to impose a penalty and which is not otherwise set under subsection (1) or (2) of this section;

(4) An amount set by the sentencing court in its discretion where the statute or ordinance authorizing the penalty for a specific infraction violation sets an upper penalty limit using language such as "not to exceed" or "not more than" a specific amount; or

(5) Fifteen dollars and fifty cents ($15.50) for an infraction without a specific penalty set under subsection (1), (2) or (3) of this section, or having no specific upper limit for which the sentencing court has discretion under subsection (4) of this section.

History.
I.C., § 18-113A, as added by 1982, ch. 353, § 7, p. 874; am. 2014, ch. 236, § 2, p. 596.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 236, rewrote the section, which formerly read: "Every offense declared to be an infraction is punishable only by a penalty not exceeding one hundred dollars ($100) and no imprisonment".

18-114. Union of act and intent.

JUDICIAL DECISIONS

ANALYSIS

Intent.
Weapons offenses.

Intent.

Defendant's belief that he could lawfully hunt with a muzzle loader because when he was previously charged with unlawful possession of a firearm, law enforcement officials who confiscated the other rifles and guns from his home did not take the muzzle loader, did not yield facts establishing the defense of misfortune or accident. The fact that defendant knowingly possessed the muzzle loader, regardless of his good intention, was all that was necessary to sustain a conviction. State v. Dolsby, 143 Idaho 352, 145 P.3d 917 (Ct. App. 2006).

Weapons Offenses.

Where the information charging defendant with purchase of firearm by a felon under § 18-3316 listed the territorial jurisdiction of Idaho and cited to the applicable statute defendant was charged under, it was sufficient for the district court to imply the necessary allegations against defendant, and, further, the inclusion of "purchase" implied a knowing act under this section. State v. Cook, 143 Idaho 323, 144 P.3d 28 (Ct. App. 2006).

Cited in: State v. Macias, 142 Idaho 509, 129 P.3d 1258 (Ct. App. 2005); State v. Tams, 149 Idaho 752, 240 P.3d 939 (Ct. App. 2010).

18-115. Manifestation of intent.

JUDICIAL DECISIONS

Accomplice.

Defendant's intent to be an accomplice for robbery could be inferred from the fact that he knowingly supplied a loaded gun with the intent that it be used against anyone who tried to prevent the robbery. State v. Mitchell, 146 Idaho 378, 195 P.3d 737 (Ct. App. 2008).

Cited in: Hoffman v. Arave, 455 F.3d 926 (9th Cir. 2006).

CHAPTER 2

PERSONS LIABLE, PRINCIPALS AND ACCESSORIES

SECTION.
18-217. Mental health records of offenders.

18-201. Persons capable of committing crimes.

JUDICIAL DECISIONS

ANALYSIS

Misdemeanor vehicular manslaughter.
Misfortune or accident.
Mistake of fact.

Misdemeanor Vehicular Manslaughter.

In a prosecution for misdemeanor vehicular manslaughter, the state must prove a culpable mental state amounting to at least simple negligence. State v. McNair, 141 Idaho 263, 108 P.3d 410 (Ct. App. 2005).

Misfortune or Accident.

Defendant's belief that he could lawfully hunt with a muzzle loader because when he was previously charged with unlawful possession of a firearm, law enforcement officials who confiscated the other rifles and guns from

his home did not take the muzzle loader, did not yield facts establishing the defense of misfortune or accident. The fact that defendant knowingly possessed the muzzle loader, regardless of his good intention, was all that was necessary to sustain a conviction. State v. Dolsby, 143 Idaho 352, 145 P.3d 917 (Ct. App. 2006).

Mistake of Fact.

Defendant's mistaken belief that the cotton ball in his possession no longer contained any methamphetamine residue did not absolve him of guilt where he earlier knew of and controlled that same methamphetamine residue as part of a larger quantity that he was using. State v. Armstrong, 142 Idaho 62, 122 P.3d 321 (Ct. App. 2005).

Cited in: State v. Macias, 142 Idaho 509, 129 P.3d 1258 (Ct. App. 2005).

18-202. Territorial jurisdiction over accused persons liable to punishment.

JUDICIAL DECISIONS

Personal Jurisdiction.

District court properly acquired personal jurisdiction over the defendant when the defendant appeared at the initial court setting on a complaint or arraignment on the indictment; thus, the district court acquired personal jurisdiction over defendant at the initial arraignment, and his physical absence from Idaho did not deprive the state of personal jurisdiction over his person. State v. Rogers, 140 Idaho 223, 91 P.3d 1127 (2004).

When the court reversed defendant's conviction for lewd and lascivious conduct with a minor under sixteen and vacated the restitution order, it lacked personal jurisdiction to order the Idaho industrial commission to refund restitution payments defendant had already made. The industrial commission was not a party to the action, and its attorneys never received notice of defendant's motion for a restitution refund. Hooper v. State, 150 Idaho 497, 248 P.3d 748 (2011).

18-204. Principals defined.

JUDICIAL DECISIONS

ANALYSIS

Aid and abet.
Evidence.
—Sufficient.
Instructions.

Aid and Abet.

Defendant was properly convicted of aiding and abetting in the commission of a burglary where the state's witness testified he had seen a man and woman taking items from storage containers behind the pawnshop, and police found stolen items from the pawnshop in the residence defendant shared with her husband and in the trunk of their car. State v. Tarrant-Folsom, 140 Idaho 556, 96 P.3d 657 (Ct. App. 2004).

Defendant's conviction for aggravated assault, was upheld, even though his lone kick to a victim's backside while the victim was being bound with duct tape was not likely to produce great bodily harm, because the actions of his group as a whole were sufficient for a reasonable jury to find a likelihood of great bodily harm; there is no legal distinction between the person who directly commits a criminal act and a person who aids and abets in its commission. State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006).

Evidence was sufficient to convict defendant of first-degree murder under an aiding and abetting theory, because there was evidence that: (1) defendant and his accomplice were in the house lying in wait for the victim; (2) two knives were used in the murder, both of which potentially caused the victim's death; (3) video footage taken immediately before and after the murder showed defendant's preparation for and involvement in the murder. It was not necessary for the state to prove that defendant inflicted the fatal wound. State v. Adamcik, 152 Idaho 445, 272 P.3d 417, cert. denied, — U.S. —, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

Evidence.

—Sufficient.

Evidence was sufficient to support defendant's convictions as an accomplice to aggravated battery, robbery, and burglary. Even though defendant did not actively participate

in the actual robbery, he knowingly supplied a loaded gun for use in the robbery, knew about the money that the victim was saving, and exerted influence over his codefendants to perform the deed. State v. Mitchell, 146 Idaho 378, 195 P.3d 737 (Ct. App. 2008).

Instructions.

Jury was properly instructed during defendant's trial for aiding and abetting in two first-degree murders where it was told that the state had to prove that defendant shared the shooter's mental state by requiring defendant to have shared the criminal intent of the shooter, such that defendant and the shooter had a community of purpose in the unlawful undertaking. State v. Reid, 151 Idaho 80, 253 P.3d 754 (Ct. App. 2011).

Cited in: State v. Nevarez, 142 Idaho 616, 130 P.3d 1154 (Ct. App. 2005).

18-205. Accessories defined.

JUDICIAL DECISIONS

ANALYSIS

Application.
Elements.
Evidence sufficient.
Sentence.

Application.

Application of this section is not limited to an escapee scenario. A person may be convicted for harboring and protecting a convicted felon even if the felony was committed at some point in the past. State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009).

Elements.

To be convicted under this section, a person must "harbor and protect" a felon; both the "protection" and the "harboring" elements must be satisfied. State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009).

Evidence Sufficient.

Evidence was sufficient to sustain defendant's conviction for being an accessory after the fact to malicious injury to property because defendant, having knowledge that a felony had been committed, willfully withheld or concealed it from the detective. Defendant specifically told the detective that neither she nor any of the other three individuals she was with on the night in question had anything to do with any of the shootings. State v. Hauser, 143 Idaho 603, 150 P.3d 296 (Ct. App. 2006).

Sentence.

When four officers arrived at defendant's apartment seeking her husband, who was wanted for felony probation violations, three officers were injured in the attempt to take the husband into custody; defendant pled guilty to harboring and protecting a felon in violation of this section. At sentencing, the district court did not err by allowing the three injured officers to give victim impact statements under § 19-5306(1)(e), Idaho Const,. art. I, § 22, and Idaho Crim. R. 32(b)(1); the officers were victims of defendant's crime of harboring and protecting her husband. State v. Lampien, 148 Idaho 367, 223 P.3d 750 (2009).

18-207. Mental condition not a defense — Provision for treatment during incarceration — Reception of evidence — Notice and appointment of expert examiners.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Construction.
Sentence.

Constitutionality.

Defendant's Fifth Amendment rights were not violated when he was ordered to undergo an examination by a state expert in an attempted murder case because defendant had indicated an intent to introduce psychiatric evidence in his defense; moreover, Idaho R. Evid. 503 was not violated either since the communications were not confidential and his defense was based on a mental condition.

State v. Santistevan, 143 Idaho 527, 148 P.3d 1273 (Ct. App. 2006).

The choice between not presenting mental health evidence or presenting mental health evidence at a capital sentencing hearing but waiving Fifth Amendment privileges, as presented by subsection (4)(c) of this section, is constitutional. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

Idaho's abolition of the insanity defense did not violate defendant's due process rights; evidence of mental illness is expressly allowed, and can be used to rebut the element of intent. State v. Delling, 152 Idaho 122, 267 P.3d 709 (2011), cert. denied, — U.S. —, 133 S. Ct. 504, 184 L. Ed. 2d 480 (2012).

Construction.

This section reduces the question of mental condition from the status of a formal defense to that of an evidentiary question. State v. Delling, 152 Idaho 122, 267 P.3d 709 (2011), cert. denied, — U.S. —, 133 S. Ct. 504, 184 L. Ed. 2d 480 (2012).

Sentence.

District court did not err by allowing the admission, during the sentencing hearing of statements defendant made to the state's psychological experts because this section does not violate the Eighth Amendment and §§ 18-215 and 19-2522 do not limit the admissibility of the statements. By its terms, § 19-2522 does not limit the consideration of other relevant evidence, and § 18-215 limits the admissibility only of statements made during examinations pursuant to three specific statutory sections; defendant's examinations were done pursuant to this section and which is not within the ambit of § 18-215. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

RESEARCH REFERENCES

A.L.R. — Extended commitment of one committed to institution as consequence of acquittal of crime on ground of insanity. 52 A.L.R.6th 567.

18-210. Lack of capacity to understand proceedings — Delay of trial.

JUDICIAL DECISIONS

Competency to Stand Trial.

Where defendant proceeding pro se on two counts of robbery exhibited bizarre behavior during the pretrial and trial process and mentioned a head injury, the district court's failure to sua sponte order a psychiatric evaluation and conduct a hearing to determine his competence to stand trial under this section was an abuse of discretion. Defendant filed a motion seeking CIA, NSA and Air Force documents; he also claimed that a CIA operative forced him to wear a bomb vest and threatened to kill him if he did not rob the banks. State v. Hawkins, 148 Idaho 774, 229 P.3d 379 (Ct. App. 2009).

Where appellant did not present an expert's opinion or any admissible evidence to show that he was not competent at the time he pled guilty, he did not demonstrate the existence of a genuine issue of material fact supporting his claim that his attorney was ineffective for failing to request a competency evaluation under this section. Ridgley v. State, 148 Idaho 671, 227 P.3d 925 (2010).

This section is a safeguard, ensuring that mentally incapacitated defendants cannot be convicted of a crime, thus making it impossible for an incapacitated person to be sentenced to prison. State v. Delling, 152 Idaho 122, 267 P.3d 709 (2011), cert. denied, — U.S. —, 133 S. Ct. 504, 184 L. Ed. 2d 480 (2012).

18-211. Examination of defendant — Appointment of psychiatrists and licensed psychologists — Hospitalization — Report.

JUDICIAL DECISIONS

ANALYSIS

Application to sentencing.
Discretion of court.
Ineffective assistance of counsel.

Application to Sentencing.

Defendant's sentence after being convicted of grand theft was inappropriate because information in the arrest reports, the competency evaluation reports, and the PSI cried out for a thorough assessment of defendant's mental condition. State v. Banbury, 145 Idaho 265, 178 P.3d 630 (Ct. App. 2007).

Trial court did not err under subsection (1) in denying defendant's request for a competency evaluation prior to sentencing, because defense counsel did not state that defendant was unable to participate or assist in the sentencing proceedings; counsel believed an evaluation would help determine why defendant declined to participate in the presentence report. State v. Hanson, 152 Idaho 314, 271 P.3d 712 (2012).

Discretion of Court.

Where defendant proceeding pro se on two counts of robbery exhibited bizarre behavior during the pretrial and trial process and mentioned a head injury, the district court's failure to sua sponte order a psychiatric evaluation and conduct a hearing to determine his competence to stand trial was an abuse of discretion. Defendant filed a motion seeking CIA, NSA and Air Force documents; he also claimed that a CIA operative forced him to wear a bomb vest and threatened to kill him if he did not rob the banks. State v. Hawkins, 148 Idaho 774, 229 P.3d 379 (Ct. App. 2009).

Ineffective Assistance of Counsel.

Where appellant did not present a qualified expert's opinion under this section or any admissible evidence to show that he was not competent at the time he pled guilty, he did not demonstrate the existence of a genuine issue of material fact supporting his claim that his attorney was ineffective for failing to request a competency evaluation under § 18-210. Ridgley v. State, 148 Idaho 671, 227 P.3d 925 (2010).

Cited in: State v. Cope, 142 Idaho 492, 129 P.3d 1241 (2006).

18-212. Determination of fitness of defendant to proceed — Suspension of proceeding and commitment of defendant — Postcommitment hearing.

JUDICIAL DECISIONS

ANALYSIS

Hearing.
—Not required.

Hearing.

—Not Required.

Where defendant had been found competent to stand trial and that finding of competence was not contested, the trial court was not required to hold a hearing on the issue and where a second evaluation was conducted pursuant to an order signed by the district court, upon the request of newly appointed counsel, the magistrate and the district court properly acted to protect the defendant's right to a fair trial. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

18-215. Admissibility of statements by examined person.

JUDICIAL DECISIONS

Admissibility.

District court did not err by allowing the admission during the sentencing hearing of statements defendant made to the state's psychological experts because § 18-207 does not violate the Eighth Amendment and § 19-2522 and this section do not limit the admissibility of the statements. By its terms, § 19-2522 does not limit the consideration of other relevant evidence, and this section limits the admissibility only of statements made during examinations pursuant to three specific statutory sections; defendant's examinations were done pursuant to § 18-207, which is not within the ambit of this section. State v. Payne, 146 Idaho 548, 199 P.3d 123 (2008).

18-216. Criminal trial of juveniles barred — Exceptions — Jurisdictional hearing — Transfer of defendant to district court.

JUDICIAL DECISIONS

Waiver of Jurisdiction.

District court did not abuse its discretion by waiving a 15-year old defendant into adult court for trial, because each factor considered was supported by substantial and competent evidence, including the young age of the victim and the seriousness of the alleged crimes of attempted murder, battery, and forcible penetration. State v. Doe (In re Doe), 147 Idaho 243, 207 P.3d 974 (2009).

Cited in: Judd v. State, 148 Idaho 22, 218 P.3d 1 (Ct. App. 2009).

18-217. Mental health records of offenders. — (1) For purposes of care, treatment or normal health care operations, records of mental health evaluation, care and treatment shall be provided upon request to and from the mental health professionals of a governmental entity and another entity providing care or treatment for any person who is:

(a) Under court commitment to a state agency pursuant to section 18-212(4), Idaho Code;

(b) A pretrial detainee;

(c) Awaiting sentencing;

(d) In the care, custody or supervision of any correctional facility as defined in section 18-101A, Idaho Code;

(e) On probation or parole;

(f) Being supervised as part of a drug court, mental health court, juvenile detention program, work release program, or similar court program; or

(g) Applying for mental health services after release from a correctional facility.

(2) No court order or authorization from the offender to transfer the records shall be required except for records of substance abuse treatment as provided by 42 CFR part 2, and sections 37-3102 and 39-308, Idaho Code.

History.

I.C., § 18-217, as added by 2006, ch. 92, § 1, p. 266.

CHAPTER 3

NATURE AND EXTENT OF PUNISHMENT IN GENERAL

18-306. Punishment for attempts.

JUDICIAL DECISIONS

ANALYSIS

Impossibility not a defense.
Prescription drug by fraud.
Procurement of prostitution.
Rape.

Impossibility Not a Defense.

District court correctly rejected defendant's proffered impossibility defense where factual or legal impossibility for the defendant to commit the intended crime was not relevant to a determination of defendant's guilt of attempt. State v. Glass, 139 Idaho 815, 87 P.3d 302 (Ct. App. 2003).

Prescription Drug by Fraud.

Obtaining a controlled substance by fraud, a violation of § 37-2734(a)(3), is a felony and is punishable by imprisonment for not more than four (4) years, or a fine of not more than $30,000, or both. Because the offense is specifically punishable by both imprisonment in the state prison and a fine, the offense falls squarely within the ambit of subsection (5) of this section, and the offense of attempting to obtain a prescription drug by fraud is, thus, a felony. State v. Summers, 152 Idaho 35, 266 P.3d 510 (Ct. App. 2011).

Procurement of Prostitution.

Defendant's convictions for the attempted procurement of prostitution and for the procurement of prostitution were proper because the attempt statute was permitted to be combined with the procurement of prostitution statute in order to convict defendant for the attempted procurement of prostitution. State v. Grazian, 144 Idaho 510, 164 P.3d 790 (2007), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Rape.

Defendant's Alford plea to charges under this section reflected his lack of acceptance of responsibility for his actions, and indicated that he was unsuitable for rehabilitation at the time of sentencing. State v. Baker, 153 Idaho 692, 290 P.3d 1284 (Ct. App. 2012).

18-307. Attempt resulting in different crime.

JUDICIAL DECISIONS

Attempted Procurement of Prostitution.

Defendant's convictions for the attempted procurement of prostitution and for the procurement of prostitution were proper because the attempt statute was permitted to be combined with the procurement of prostitution statute in order to convict defendant for the attempted procurement of prostitution. State v. Grazian, 144 Idaho 510, 164 P.3d 790 (2007), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

18-308. Successive terms of imprisonment.

JUDICIAL DECISIONS

ANALYSIS

Common law rule.
Consecutive sentences.
Power of court.

Common Law Rule.

This section was not the source of a trial court's authority to impose a cumulative sentence because under the common law, the courts in Idaho had discretionary power to impose cumulative sentences. The trial court in Twin Falls did not intend that the incarceration ordered would commence after defendant's probation ended in the Gooding county case, such that it clearly intended that the incarceration in the Twin Falls county case would be cumulative to any incarceration defendant served in the Gooding county case, and it had the common law authority to do so. State v. Cisneros-Gonzalez, 141 Idaho 494, 112 P.3d 782 (2004).

Consecutive Sentences.

Trial court possessed authority to impose successive two-year periods of probation for each of defendant's misdemeanor convictions, regardless of the length of the suspended jail sentences. State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006).

In prosecution of defendant on probation, magistrate had authority to execute the previously suspended sentence, as well as impose two suspended sentences and two consecutive terms of probation for the current offenses. State v. Clapper, 143 Idaho 338, 144 P.3d 43 (Ct. App. 2006).

When sentencing defendant for leaving the scene of an accident resulting in injury or death, reckless driving, and obstructing an officer, the trial court did not impose an excessive sentence by requiring that defendant's sentence run consecutively to a sentence in a prior case where the trial court properly

weighed the protection of society with the possibility of rehabilitation and deterrence; defendant had a prior criminal record and had served time in prison for rape. State v. Mead, 145 Idaho 378, 179 P.3d 341 (Ct. App. 2008).

Power of Court.

Because the district court had only ministerial authority to act, and changing defendant's sentence from running concurrently sentences to running consecutively was a discretionary and substantive change, the district court had no subsidiary authority to order that defendant's sentence be served consecutively. State v. Bosier, 149 Idaho 664, 239 P.3d 462 (Ct. App. 2010).

Cited in: State v. Calley, 140 Idaho 663, 99 P.3d 616 (2004).

18-309. Computation of term of imprisonment.

JUDICIAL DECISIONS

Analysis

Entitlement to credit for time served.
Probation.
Retained jurisdiction confinement.

Entitlement to Credit for Time Served.

Defendant could receive credit against prison time for time served in physical custody awaiting sentencing after his arrest; however, defendant was not entitled to credit against the probationary period for time served in jail. Muchow v. State, 142 Idaho 401, 128 P.3d 938 (2006).

Regardless of whether there were errors in the modified sentence, that was the sentence that the Idaho department of corrections (IDOC) was charged with administering unless or until the sentence had been corrected by the sentencing court or by an appellate court through proper judicial proceedings; consequently, the magistrate's order dismissing the inmate's petition for writ of habeas corpus was reversed, and the IDOC was directed to apply credit to the inmate's escape sentence. Fullmer v. Collard, 143 Idaho 171, 139 P.3d 773 (Ct. App. 2006).

Defendant was entitled to credit on his possession of methamphetamine sentence for his incarceration from the date of the service of a bench warrant until the entry of an order revoking probation, because (1) when defendant was arrested on a bench warrant for a probation violation and the probation was revoked, the time of defendant's sentence was to count from the date of service of such bench warrant, and (2) while credit was applied to defendant's delivery of methamphetamine sentence, granting credit on each sentence from the date the warrant was served would not give defendant credit against his prison sentences for more time than he actually served in the county jail because concurrent sentences were imposed. State v. McCarthy, 145 Idaho 397, 179 P.3d 360 (Ct. App. 2008).

Probation.

District court erred in granting petitioner credit for time served while on probation because, although he was in the legal custody of the board of corrections while on probation, he was only entitled to credit for time served while being incarcerated. Taylor v. State, 145 Idaho 866, 187 P.3d 1241 (Ct. App. 2008).

Retained Jurisdiction Confinement.

Defendant had been convicted of DUI, but his sentence had been withheld pending probation. After his third probation violation, his sentence was commuted to a nine-month jail sentence, with no express mention of credit for pre-sentence incarceration. Defendant was, therefore, entitled to credit for all time served pursuant to probation violations, and trial court was without authority to amend the judgment to deny him any portion of that credit. State v. Allen, 144 Idaho 875, 172 P.3d 1150 (Ct. App. 2007).

Cited in: State v. McNeil, 141 Idaho 383, 109 P.3d 1125 (Ct. App. 2005).

18-310. Imprisonment — Effect on civil rights and offices.

JUDICIAL DECISIONS

Application.

The defendant entered a conditional guilty plea to unlawful possession of a firearm. However, the trial court erred when it denied defendant's motion to dismiss, because, under a proper interpretation of Idaho statutes, defendant's possession of a firearm was not illegal. Defendant's out-of-state convictions

for drug offenses were committed prior to 1991, so this section automatically restored his right to bear arms when he completed his probation for the predicate felonies. State v. Boren, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 27 (Ct. App. Mar. 14, 2013).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

CHAPTER 4

ABANDONMENT OR NONSUPPORT OF WIFE OR CHILDREN

18-403. Abandonment or nonsupport prima facie wilful.

JUDICIAL DECISIONS

Cited in: State v. Marsh, 153 Idaho 360, 283 P.3d 107 (Ct. App. 2011).

CHAPTER 5

PAIN-CAPABLE UNBORN CHILD PROTECTION ACT

SECTION.
18-501. Short title.
18-502. Definitions.
18-503. Legislative findings.
18-504. Determination of postfertilization age.
18-505. Abortion of unborn child of twenty or more weeks postfertilization age prohibited.
18-506. Reporting.
18-507. Criminal penalties.
18-508. Civil remedies.
18-509. Protection of privacy in court proceedings.
18-510. Litigation defense fund.

18-501. Short title. — This act shall be known and may be cited as the "Pain-Capable Unborn Child Protection Act."

History.
I.C., § 18-501, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Compiler's Notes.
The term "this act" refers to S.L. 2011, ch. 324, which is codified as §§ 18-501 to 18-510.

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

JUDICIAL DECISIONS

Constitutionality.
The Pain-Capable Unborn Child Protection Act, § 18-501 et seq., is inconstitutional, as it embodies a legislative judgment equating viability with twenty weeks' gestational age, which the United States supreme court expressly forbids. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

18-502. Definitions. — For purposes of this chapter:

(1) "Abortion" means the use or prescription of any instrument, medicine, drug or other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead unborn child who died as the result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or her unborn child, and which causes the premature termination of the pregnancy;

(2) "Attempt to perform or induce an abortion" means an act, or an omission of a statutorily required act, that, under the circumstances as the actor believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the provisions of this chapter;

(3) "Fertilization" means the fusion of a human spermatozoon with a human ovum;

(4) "Medical emergency" means a condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy without first determining postfertilization age to avert her death or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function;

(5) "Physician" means any person licensed to practice medicine and surgery or osteopathic medicine under chapter 18, title 54, Idaho Code;

(6) "Postfertilization age" means the age of the unborn child as calculated from the fertilization of the human ovum;

(7) "Probable postfertilization age of the unborn child" means what, in reasonable medical judgment, will with reasonable probability be the postfertilization age of the unborn child at the time the abortion is planned to be performed;

(8) "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved;

(9) "Unborn child" or "fetus" means an individual organism of the species homo sapiens from fertilization until live birth; and

(10) "Woman" means a female human being whether or not she has reached the age of majority.

History.

I.C., § 18-502, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

18-503. Legislative findings. — The legislature makes the following findings:

(1) Pain receptors (nociceptors) are present throughout the unborn child's entire body by no later than sixteen (16) weeks after fertilization and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty (20) weeks.

(2) By eight (8) weeks after fertilization, the unborn child reacts to touch. After twenty (20) weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example by recoiling.

(3) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

(4) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral and learning disabilities later in life.

(5) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia.

(6) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty (20) weeks after fertilization predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

(7) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

(8) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

(9) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

(10) Consequently, there is substantial medical evidence that an unborn child is capable of experiencing pain by twenty (20) weeks after fertilization.

(11) It is the purpose of the state of Idaho to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain.

(12) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which, in the context of determining the severability of a state statute regulating abortion, the United States supreme court noted that an explicit statement of

legislative intent is of greater weight than inclusion of a severability clause standing alone, the legislature declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrases, phrase or word thereof, irrespective of the fact that any one (1) or more provisions, sections, subsections, sentences, clauses or words of this act or the application thereof to any person or circumstance, were to be declared unconstitutional.

History.
I.C., § 18-503, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Compiler's Notes.
The term "this act" in subsection (12) refers to S.L. 2011, ch. 324, which is codified as §§ 18-501 to 18-510.
The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

18-504. Determination of postfertilization age. — (1) Except in the case of a medical emergency, no abortion shall be performed or induced or be attempted to be performed or induced unless the physician performing or inducing it has first made a determination of the probable postfertilization age of the unborn child or relied upon such a determination made by another physician. In making such a determination, a physician shall make such inquiries of the woman and perform or cause to be performed such medical examinations and tests as a reasonably prudent physician, knowledgeable about the case and the medical conditions involved, would consider necessary to perform in making an accurate diagnosis with respect to postfertilization age.

(2) Intentional or reckless failure by any physician to conform to any requirement of this section makes the physician subject to medical discipline pursuant to section 54-1814(6), Idaho Code.

History.
I.C., § 18-504, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

18-505. Abortion of unborn child of twenty or more weeks postfertilization age prohibited. — No person shall perform or induce or attempt to perform or induce an abortion upon a woman when it has been determined, by the physician performing or inducing the abortion or by another physician upon whose determination that physician relies, that the probable postfertilization age of the woman's unborn child is twenty (20) or more weeks unless, in reasonable medical judgment: (1) she has a condition

that so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions; or (2) it is necessary to preserve the life of an unborn child. No such condition shall be deemed to exist if it is based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

History.
I.C., § 18-505, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

JUDICIAL DECISIONS

Constitutionality.
The Pain-Capable Unborn Child Protection Act, § 18-501 et seq., is inconstitutional, as it embodies a legislative judgment equating viability with twenty weeks' gestational age, which the United States supreme court expressly forbids. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

Cited in: McCormack v. Hiedeman, 694 F.3d 1004 (9th Cir. 2012).

18-506. Reporting. — (1) Any physician who performs or induces or attempts to perform or induce an abortion shall report to the department of health and welfare, on a schedule and in accordance with forms and rules adopted and promulgated by the department:

(a) If a determination of probable postfertilization age was made, the probable postfertilization age determined and the method and basis of the determination;

(b) If a determination of probable postfertilization age was not made, the basis of the determination that a medical emergency existed;

(c) If the probable postfertilization age was determined to be twenty (20) or more weeks, the basis of the determination that the pregnant woman had a condition that so complicated her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions, or the basis of the determination that it was necessary to preserve the life of an unborn child; and

(d) The method used for the abortion.

(2) By June 30 of each year, the department shall issue a public report providing statistics for the previous calendar year compiled from all of the reports covering that year submitted in accordance with this section for each of the items listed in subsection (1) of this section. Each such report shall also provide the statistics for all previous calendar years during which this section was in effect, adjusted to reflect any additional information from late

or corrected reports. The department shall take care to ensure that none of the information included in the public reports could reasonably lead to the identification of any pregnant woman upon whom an abortion was performed.

(3) Any physician who fails to submit a report by the end of thirty (30) days following the due date shall be subject to a late fee of five hundred dollars ($500) for each additional thirty (30) day period or portion of a thirty (30) day period the report is overdue. Any physician required to report in accordance with this chapter who has not submitted a report, or has submitted only an incomplete report, more than one (1) year following the due date, may, in an action brought by the department, be directed by a court of competent jurisdiction to submit a complete report within a time period stated by court order or be subject to civil contempt. Intentional or reckless failure by any physician to conform to any requirement of this section, other than late filing of a report, makes the physician subject to medical discipline under section 54-1814(6), Idaho Code. Intentional or reckless failure by any physician to submit a complete report in accordance with a court order renders the physician subject to civil contempt and makes the physician subject to medical discipline pursuant to section 54-1814(6), Idaho Code. Intentional or reckless falsification of any report required under this section is a misdemeanor.

(4) Within ninety (90) days after the effective date of this act, the department shall adopt and promulgate rules to assist in compliance with this section. Subsection (1) of this section shall take effect so as to require reports regarding all abortions performed or induced on and after the first day of the first calendar month following the effective date of such rules.

History.
I.C., § 18-506, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Compiler's Notes.
The phrase "the effective date of this act" in subsection (4) refers to the effective date of S.L. 2011, ch. 324, which was April 13, 2011.

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

18-507. Criminal penalties. — Any person who intentionally or recklessly performs or attempts to perform an abortion in violation of the provisions of section 18-505, Idaho Code, is guilty of a felony. No penalty shall be assessed against the woman upon whom the abortion is performed or attempted to be performed.

History.
I.C., § 18-507, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

18-508. Civil remedies. — (1) Any woman upon whom an abortion has been performed in violation of the pain-capable unborn child protection act or the father of the unborn child who was the subject of such an abortion may maintain an action against the person who performed the abortion in an intentional or a reckless violation of the provisions of this chapter for actual damages. Any woman upon whom an abortion has been attempted in violation of the provisions of this chapter may maintain an action against the person who attempted to perform the abortion in an intentional or a reckless violation of the provisions of this chapter for actual damages.

(2) A cause of action for injunctive relief against any person who has intentionally or recklessly violated the provisions of this chapter may be maintained by the woman upon whom an abortion was performed or attempted to be performed in violation of the provisions of this chapter, by any person who is the spouse, parent, sibling, or guardian of, or a current or former licensed health care provider of, the woman upon whom an abortion has been performed or attempted to be performed in violation of the provisions of this chapter, by a prosecuting attorney with appropriate jurisdiction, or by the attorney general. The injunction shall prevent the abortion provider from performing or attempting to perform further abortions in violation of the provisions of this chapter in this state.

(3) No damages may be assessed against the woman upon whom an abortion was performed or attempted to be performed.

History.
I.C., § 18-508, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

JUDICIAL DECISIONS

Constitutionality.
The Pain-Capable Unborn Child Protection Act, § 18-501 et seq., is inconstitutional, as it embodies a legislative judgment equating viability with twenty weeks' gestational age, which the United States supreme court expressly forbids. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

18-509. Protection of privacy in court proceedings. — In every civil or criminal proceeding or action brought under the pain-capable unborn child protection act, the court shall rule whether the anonymity of any woman upon whom an abortion has been performed or attempted shall be preserved from public disclosure if she does not give her consent to such disclosure. The court, upon motion or sua sponte, shall make such a ruling

and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom an abortion has been performed or attempted, anyone, other than a public official, who brings an action under the provisions of section 18-508, Idaho Code, shall do so under a pseudonym. This section shall not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

History.
I.C., § 18-509, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

18-510. Litigation defense fund. — There is hereby created in the state treasury the pain-capable unborn child protection act litigation fund for the purpose of providing funds to pay for any costs and expenses incurred by the state attorney general in relation to actions surrounding defense of this chapter. This fund may include appropriations, donations, gifts or grants made to the fund. Interest earned on the investment of idle moneys in the fund shall be returned to the fund. Moneys in the fund may be expended pursuant to appropriation.

History.
I.C., § 18-510, as added by 2011, ch. 324, § 1, p. 945.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2011, ch. 324 provided: "Severability and Construction. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act. Notwithstanding section 18-608, Idaho Code, an abortion that complies with that section but violates the provisions of chapter 5, title 18, Idaho Code, or an otherwise applicable provision of chapter 6, title 18, Idaho Code, or other controlling rule of Idaho law shall be deemed unlawful as provided in such section, provision or rule. An abortion that complies with the provisions of chapter 5, title 18, Idaho Code, but violates the provisions of section 18-608, Idaho Code, or an otherwise applicable provision of chapter 6, title 18, Idaho Code, or other controlling rule of Idaho law shall be deemed unlawful as provided in such section, provision or rule. If some or all of the provisions of chapter 5, title 18, Idaho Code, are ever temporarily or permanently restrained or enjoined by judicial order, chapter 5, title 18, Idaho Code, chapter 6, title 18, Idaho Code, and other controlling rules of Idaho law shall be enforced as though such

restrained or enjoined provisions had not been adopted, provided however, that whenever such temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect."

Effective Dates.

Section 3 of S.L. 2011, ch. 324 declared an emergency. Approved April 13, 2011.

CHAPTER 6

ABORTION AND CONTRACEPTIVES

SECTION.
18-604. Definitions.
18-605. Unlawful abortions — Procurement of — Penalty.
18-609. Physicians and hospitals not to incur civil liability — Consent to abortion — Notice.
18-609A. Consent required for abortions for minors.
18-609B — 18-609E. [Reserved.]
SECTION.
18-609F. Reporting by courts.
18-609G. Statistical records.
18-611. Freedom of conscience for health care professionals.
18-614. Defenses to prosecution.
18-615. Criminal act to coerce or attempt to coerce a woman to obtain an abortion.
18-616. Severability.

18-601. Interpretation of state statutes and the state constitution.

RESEARCH REFERENCES

A.L.R. — Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme court cases. 20 A.L.R. Fed. 2d 1.

18-602. Legislative findings and intent.

STATUTORY NOTES

Compiler's Notes.

This section was amended by S.L. 2005, ch. 393, § 1, effective upon notification to the Idaho Code Commission that certain conditions had been met. S.L. 2005, chapter 393 was subsequently repealed by S.L. 2007, ch. 193, § 1, effective March 27, 2007.

RESEARCH REFERENCES

A.L.R. — Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme court cases. 20 A.L.R. Fed. 2d 1.

18-603. Advertising medicines or other means for preventing conception, or facilitating miscarriage or abortion.

RESEARCH REFERENCES

A.L.R. — Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme court cases. 20 A.L.R. Fed. 2d 1.

18-604. Definitions. — As used in this act:

(1) "Abortion" means the use of any means to intentionally terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child except that, for the purposes of this chapter,

abortion shall not mean the use of an intrauterine device or birth control pill to inhibit or prevent ovulations, fertilization or the implantation of a fertilized ovum within the uterus.

(2) "Department" means the Idaho department of health and welfare.

(3) "Emancipated" means any minor who has been married or is in active military service.

(4) "Fetus" and "unborn child." Each term means an individual organism of the species homo sapiens from fertilization until live birth.

(5) "First trimester of pregnancy" means the first thirteen (13) weeks of a pregnancy.

(6) "Hospital" means an acute care, general hospital in this state, licensed as provided in chapter 13, title 39, Idaho Code.

(7) "Informed consent" means a voluntary and knowing decision to undergo a specific procedure or treatment. To be voluntary, the decision must be made freely after sufficient time for contemplation and without coercion by any person. To be knowing, the decision must be based on the physician's accurate and substantially complete explanation of:

(a) A description of any proposed treatment or procedure;

(b) Any reasonably foreseeable complications and risks to the patient from such procedure, including those related to reproductive health; and

(c) The manner in which such procedure and its foreseeable complications and risks compare with those of each readily available alternative to such procedure, including childbirth and adoption.

The physician must provide the information in terms which can be understood by the person making the decision, with consideration of age, level of maturity and intellectual capability.

(8) "Medical emergency" means a condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(9) "Minor" means a woman less than eighteen (18) years of age.

(10) "Pregnant" and "pregnancy." Each term shall mean the reproductive condition of having a developing fetus in the body and commences with fertilization.

(11) "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state as provided in chapter 18, title 54, Idaho Code.

(12) "Second trimester of pregnancy" means that portion of a pregnancy following the thirteenth week and preceding the point in time when the fetus becomes viable, and there is hereby created a legal presumption that the second trimester does not end before the commencement of the twenty-fifth week of pregnancy, upon which presumption any licensed physician may proceed in lawfully aborting a patient pursuant to section 18-608, Idaho Code, in which case the same shall be conclusive and unrebuttable in all civil or criminal proceedings.

(13) "Third trimester of pregnancy" means that portion of a pregnancy from and after the point in time when the fetus becomes viable.

(14) Any reference to a viable fetus shall be construed to mean a fetus potentially able to live outside the mother's womb, albeit with artificial aid.

History.
1973, ch. 197, § 3, p. 442; am. 2000, ch. 7, § 2, p. 10; am. 2006, ch. 438, §§ 1, 2, p. 1322.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 438, substituted the current definition for "abortion" for the former which read "the intentional termination of human pregnancy for purposes other than delivery of a viable birth"; under the definition for "informed consent" deleted "each fact pertinent to making the decision. Facts pertinent to making the decision shall include, but not be limited to:"; and added the definitions for "department", "emancipated", "fetus", "medical emergency", "minor", and "pregnant" and "pregnancy"; and redesignated the remaining subsections accordingly.

Compiler's Notes.
The amendment of this section by section 2 of S.L. 2005, ch. 393, contingently effective upon certain actions by the Attorney General and Secretary of State, was repealed by section 2 of S.L. 2006, ch. 438, before ever going into effect.

The words "this act" refer to S.L. 1973, ch. 197, compiled as §§ 18-604 to 18-608, 18-609, 18-610, and 18-612.

18-605. Unlawful abortions — Procurement of — Penalty. — (1) Every person not licensed or certified to provide health care in Idaho who knowingly, except as permitted by this chapter, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon any then-pregnant woman with intent thereby to cause or perform an abortion shall be guilty of a felony and shall be fined not to exceed five thousand dollars ($5,000) and/or imprisoned in the state prison for not less than two (2) and not more than five (5) years.

(2) Any person licensed or certified to provide health care pursuant to title 54, Idaho Code, and who knowingly, except as permitted by the provisions of this chapter, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon any then-pregnant woman with intent to cause or perform an abortion shall:

(a) For the first violation, be subject to professional discipline and be assessed a civil penalty of not less than one thousand dollars ($1,000), payable to the board granting such person's license or certification;

(b) For the second violation, have their license or certification to practice suspended for a period of not less than six (6) months and be assessed a civil penalty of not less than two thousand five hundred dollars ($2,500), payable to the board granting such person's license or certification; and

(c) For each subsequent violation, have their license or certification to practice revoked and be assessed a civil penalty of not less than five thousand dollars ($5,000), payable to the board granting such person's license or certification.

(3) Any person who is licensed or certified to provide health care pursuant to title 54, Idaho Code, and who knowingly violates the provisions of this chapter is guilty of a felony punishable as set forth in subsection (1) of this

section, separate from and in addition to the administrative penalties set forth in subsection (2) of this section.

History.
1973, ch. 197, § 4, p. 442; am. 2001, ch. 277, § 1, p. 1000; am. 2007, ch. 193, § 3, p. 565.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 193, in subsection (1) and in the introductory paragraph in subsection (2), inserted "knowingly" near the beginning.

Compiler's Notes.
This section was amended by S.L. 2005, ch. 393, § 3, effective upon notification to the Idaho Code Commission that certain conditions had been met. S.L. 2005, Chapter 393 was subsequently repealed by S.L. 2007, ch. 193, § 1, effective March 27, 2007.

Effective Dates.
Section 8 of S.L. 2007, ch. 193 declared an emergency. Approved March 27, 2007.

JUDICIAL DECISIONS

Constitutionality.
This section, in conjunction with § 18-608(1), is unconstitutional, as the terms "properly" and "satisfactory" in the latter section are ambiguous terms and there was no mention or definition of the community standard of care. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

This section, in conjunction § 18-608(2), is unconstitutional, as the second trimester hospitalization requirement places a substantial obstacle in the path of women seeking an abortion. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

RESEARCH REFERENCES

A.L.R. — Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme court cases. 20 A.L.R. Fed. 2d 1.

18-606. Unlawful abortions — Accomplice or accessory — Submitting to — Penalty.

JUDICIAL DECISIONS

Undue Burden.
This section, with § 18-608(1) and (2), place an undue burden on a woman's ability to terminate a pre-viability pregnancy. McCormack v. Hiedeman, 694 F.3d 1004 (9th Cir. 2012).

This section constitutes an undue burden on a woman's constitutional right to terminate her pregnancy before viability, by requiring her to police her provider's compliance with Idaho's regulations. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

RESEARCH REFERENCES

A.L.R. — Women's reproductive rights concerning abortion, and governmental regulation thereof — Supreme court cases. 20 A.L.R. Fed. 2d 1.

18-608. Certain abortions permitted — Conditions and guidelines.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Undue burden.

Constitutionality.

This section, in conjunction with § 18-605, is unconstitutional, as the terms "properly" and "satisfactory" in this section are ambiguous terms and there was no mention or definition of the community standard of care. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

This section, with § 18-606, is unconstitutional, as it places an undue burden on a woman's right to have an abortion by requiring low-income women to travel long distances to the closest abortion provider and by threatening criminal prosecution based on an abortion provider's purported failure to comply with state abortion regulations. McCormack v. Hiedeman, 900 F. Supp. 2d 1128 (D. Idaho 2013).

Undue Burden.

Subsections (1) and (2) of this section, with § 18-606, place an undue burden on a woman's ability to terminate a pre-viability pregnancy. McCormack v. Hiedeman, 694 F.3d 1004 (9th Cir. 2012).

18-609. Physicians and hospitals not to incur civil liability — Consent to abortion — Notice. — (1) Any physician may perform an abortion not prohibited by this act and any hospital or other facility described in section 18-608, Idaho Code, may provide facilities for such procedures without, in the absence of negligence, incurring civil liability therefor to any person including, but not limited to, the pregnant patient and the prospective father of the fetus to have been born in the absence of abortion, if informed consent for such abortion has been duly given by the pregnant patient.

(2) In order to provide assistance in assuring that the consent to an abortion is truly informed consent, the director of the department of health and welfare shall publish easily comprehended, nonmisleading and medically accurate printed material to be made available at no expense to physicians, hospitals or other facilities providing abortion and abortion-related services, and which shall contain the following:

(a) Descriptions of the services available to assist a woman through a pregnancy, at childbirth and while the child is dependent, including adoption services, a comprehensive list of the names, addresses, and telephone numbers of public and private agencies that provide such services and financial aid available;

(b) Descriptions of the physical characteristics of a normal fetus, described at two (2) week intervals, beginning with the fourth week and ending with the twenty-fourth week of development, accompanied by scientifically verified photographs of a fetus during such stages of development. The description shall include information about physiological and anatomical characteristics; and

(c) Descriptions of the abortion procedures used in current medical practices at the various stages of growth of the fetus and any reasonable foreseeable complications and risks to the mother, including those related to subsequent child bearing.

(3)(a) The department of health and welfare shall develop and maintain a stable internet website, that may be part of an existing website, to provide the information described in subsection (2) of this section. No information regarding persons using the website shall be collected or maintained. The department of health and welfare shall monitor the website on a weekly basis to prevent and correct tampering.

(b) As used in this section, "stable internet website" means a website that, to the extent reasonably practicable, is safeguarded from having its content altered other than by the department of health and welfare.

(c) When a pregnant patient contacts a physician by telephone or visit and inquires about obtaining an abortion, the physician or the physician's agent before or while scheduling an abortion-related appointment must provide the woman with the address of the state-sponsored internet website on which the printed materials described in subsection (2) of this section may be viewed as required in subsection (2) of this section.

(4) Except in the case of a medical emergency, no abortion shall be performed unless, prior to the abortion, the attending physician or the attending physician's agent certifies in writing that the materials provided by the director have been provided to the pregnant patient at least twenty-four (24) hours before the performance of the abortion. If the materials are not available from the director of the department of health and welfare, no certification shall be required. The attending physician, or the attending physician's agent, shall provide any other information required under this act.

(5) All physicians or their agents who use ultrasound equipment in the performance of an abortion shall inform the patient that she has the right to view the ultrasound image of her unborn child before an abortion is performed. If the patient requests to view the ultrasound image, she shall be allowed to view it before an abortion is performed. The physician or agent shall also offer to provide the patient with a physical picture of the ultrasound image of her unborn child prior to the performance of the abortion, and shall provide it if requested by the patient. In addition to providing the material, the attending physician may provide the pregnant patient with such other information which in the attending physician's judgment is relevant to the pregnant patient's decision as to whether to have the abortion or carry the pregnancy to term.

(6) Within thirty (30) days after performing any abortion without certification and delivery of the materials, the attending physician, or the attending physician's agent, shall cause to be delivered to the director of the department of health and welfare, a report signed by the attending physician, preserving the patient's anonymity, denoting the medical emergency that excused compliance with the duty to deliver the materials. The director of the department of health and welfare shall compile the information annually and report to the public the total number of abortions performed in the state where delivery of the materials was excused; provided that any information so reported shall not identify any physician or patient in any manner which would reveal their identities.

(7) If section 18-608(3), Idaho Code, applies to the abortion to be performed and the pregnant patient is an adult and for any reason unable to give a valid consent thereto, the requirement for that pregnant patient's consent shall be met as required by law for other medical or surgical procedures and shall be determined in consideration of the desires, interests and welfare of the pregnant patient.

(8) The knowing failure of the attending physician to perform any one (1) or more of the acts required under subsection (6) of this section or section

39-261, Idaho Code, is grounds for discipline pursuant to section 54-1814(6), Idaho Code, and shall subject the physician to assessment of a civil penalty of one hundred dollars ($100) for each month or portion thereof that each such failure continues, payable to the vital statistics unit of the department of health and welfare, but such failure shall not constitute a criminal act.

History.

1973, ch. 197, § 8, p. 442; am. 1982, ch. 242, § 1, p. 627; am. 1983, ch. 149, § 1, p. 403; am. 2000, ch. 7, § 4, p. 10; am. 2006, ch. 438, § 3, p. 1322; am. 2007, ch. 224, § 1, p. 676; am. 2008, ch. 348, § 1, p. 958.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 438, in subsection (2) substituted "shall publish easily comprehended, nonmisleading and medically accurate printed material" for "shall publish, after consultation with interested parties, easily comprehended printed material", substituted "at no expense to physicians, hospitals of other facilities providing abortion and abortion-related services" for "to be made available at the expense of the physician, hospital or other facility providing the abortion", and, at the end of subsection (b), deleted "brain and heart function, and the presence of external members and internal organs during the applicable stages of development"; in subsection (3), added the exception at the beginning, deleted "confirms or verifies a positive pregnancy test and informs the pregnant patient of a positive pregnancy test, and" preceding "certifies in writing", and deleted "if reasonably possible" preceding "at least twenty-four (24) hours"; in subsection (4) deleted the former first sentence regarding the disclosure of material not being required and substituted "denoting the medical emergency" for "which explains the specific circumstances"; and added subsection (6) and made stylistic changes.

The 2007 amendment, by ch. 224, in subsection (3), added the fourth through sixth sentences.

The 2008 amendment, by ch. 348, added subsection (3) and redesignated the subsequent subsections accordingly.

Effective Dates.

Section 2 of S.L. 2008, ch. 348 provided that the act should take effect on and after January 1, 2009, and that the Department of Health and Welfare shall have authority to and shall place a notice on its website no later than November 30, 2008, of the address of the website required by the act and shall provide notice to the State Board of Medicine of the Department of Health and Welfare's website address required by the act.

RESEARCH REFERENCES

A.L.R. — Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

18-609A. Consent required for abortions for minors. — (1) Except as otherwise provided in this section, a person shall not knowingly perform an abortion on a pregnant unemancipated minor unless the attending physician has secured the written consent from one (1) of the minor's parents or the minor's guardian or conservator.

(2) A judge of the district court shall, on petition or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines, by clear and convincing evidence, that:

(a) The pregnant minor is mature and capable of giving informed consent to the proposed abortion; or

(b) The performance of an abortion would be in her best interests.

(3) The pregnant minor may participate in the court proceedings on her own behalf. The court may appoint a guardian ad litem for her. The court shall provide her with counsel unless she appears through private counsel.

(4) Proceedings in the court under this section shall be closed and have precedence over other pending matters. A judge who conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a confidential record of the evidence to be maintained including the judge's own findings and conclusions. The minor may file the petition using a fictitious name. All records contained in court files of judicial proceedings arising under the provisions of this section shall be confidential and exempt from disclosure pursuant to section 9-340G, Idaho Code. Dockets and other court records shall be maintained and court proceedings undertaken so that the names and identities of the parties to actions brought pursuant to this section will not be disclosed to the public.

(5) The court shall hold the hearing within forty-eight (48) hours, excluding weekends and holidays, after the petition is filed, and shall issue its ruling at the conclusion of the hearing. If the court fails to issue its ruling at the conclusion of the hearing, the petition is deemed to have been granted and the consent requirement is waived.

(6) An expedited confidential appeal is available to a pregnant minor for whom the court denies an order authorizing an abortion without parental consent. A minor shall file her notice of appeal within five (5) days, excluding weekends and holidays, after her petition was denied by the district court. The appellate court shall hold the hearing within forty-eight (48) hours, excluding weekends and holidays, after the notice of appeal is filed and shall issue its ruling at the conclusion of the hearing. If the appellate court fails to issue its ruling at the conclusion of the hearing, the petition is deemed to have been granted and the consent requirement is waived. Filing fees are not required of the pregnant minor at either the district court or the appellate level.

(7) Parental consent or judicial authorization is not required under this section if either:

(a) The pregnant minor certifies to the attending physician that the pregnancy resulted from rape as defined in section 18-6101, Idaho Code, excepting subsections (1) and (2) thereof, or sexual conduct with the minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent.

(b) A medical emergency exists for the minor and the attending physician records the symptoms and diagnosis upon which such judgment was made in the minor's medical record.

History.

I.C., § 18-609A, as added by 2007, ch. 193, § 5, p. 565; am. 2010, ch. 352, § 4, p. 920.

STATUTORY NOTES

Prior Laws.

Former § 18-609A, which comprised I.C., § 18-609A, as added by 2000, ch. 7, § 5, p. 10; am. 2001, ch. 277, § 2, p. 1000; am. 2005, ch. 391, § 52, p. 1263, was repealed by S.L. 2007, ch. 193, § 4, effective March 27, 2007.

Amendments.

The 2010 amendment, by ch. 352, inserted "and (2)" in paragraph (7)(a).

Compiler's Notes.

This section was amended by S.L. 2005, ch.

393, § 4, effective upon notification to the Idaho Code Commission that certain conditions had been met. S.L. 2005, Chapter 393 was subsequently repealed by S.L. 2007, ch. 193, § 1, effective March 27, 2007.

Effective Dates.

Section 8 of S.L. 2007, ch. 193 declared an emergency. Approved March 27, 2007.

JUDICIAL DECISIONS

Decisions Under Prior Law

Constitutionality.

Definition of "medical emergency" in Idaho's law governing minors' access to abortion services, which allows an abortion without proper consent only when the minor has a medical condition that is sudden, unexpected, and abnormal, is unconstitutionally narrow, and without an adequate medical exception, the parental consent statute is per se unconstitutional; no part is salvageable, through a limiting construction, or by operation of the meticulous severability provision under § 18-615. Planned Parenthood of Idaho, Inc. v. Wasden, 376 F.3d 908 (9th Cir. 2004), cert. denied, 544 U.S. 948, 125 S. Ct. 1694, 161 L. Ed. 2d 524 (2005).

By forcing a minor to either obtain the consent of neglectful or abusive parents or go through a consent bypass process that would surely identify her close-in-age boyfriend who impregnated her during consensual sex, exposing him to a criminal charge, the Act, House Bill 351, in particular former § 18-609A, impermissibly placed an undue burden on the minor's right to choose. Planned Parenthood of Idaho, Inc. v. Wasden, 376 F. Supp. 2d 1012 (D. Idaho 2005).

RESEARCH REFERENCES

A.L.R. — Validity of state "informed consent" statutes by which providers of abortions are required to provide patient seeking abortion with certain information. 119 A.L.R.5th 315.

18-609B — 18-609E. [Reserved.]

18-609F. Reporting by courts. — The administrative director of the courts shall compile statistics for each calendar year, accessible to the public, including:

(1) The total number of petitions filed pursuant to section 18-609A, Idaho Code; and

(2) The number of such petitions filed where a guardian ad litem was requested and the number where a guardian ad litem or other person acting in such capacity was appointed; and

(3) The number of petitions where counsel appeared for the minor without court appointment; and

(4) The number of petitions where counsel was requested by the minor and the number where counsel was appointed by the court; and

(5) The number of such petitions for which the right to self-consent was granted; and

(6) The number of such petitions for which the court granted its informed consent; and

(7) The number of such petitions which were denied; and

(8) The number of such petitions which were withdrawn by the minor; and

(9) For categories described in subsections (3), (4) and (7) of this section, the number of appeals taken from the court's order in each category; and

(10) For each of the categories set out in subsection (9) of this section, the

number of cases for which the district court's order was affirmed and the number of cases for which the district court's order was reversed; and

(11) The age of the minor for each petition; and

(12) The time between the filing of the petition and the hearing of each petition; and

(13) The time between the hearing and the decision by the court for each petition; and

(14) The time between the decision and filing a notice of appeal for each case, if any; and

(15) The time of extension granted by the court in each case, if any.

History.
I.C., § 18-609F, as added by 2007, ch. 193, § 5, p. 565.

STATUTORY NOTES

Effective Dates.
Section 8 of S.L. 2007, ch. 193 declared an emergency. Approved March 27, 2007.

18-609G. Statistical records. — (1) The bureau of vital statistics of the department of health and welfare shall, in addition to other information required pursuant to section 39-261, Idaho Code, require the complete and accurate reporting of information relevant to each abortion performed upon a minor which shall include, at a minimum, the following:

(a) Whether the abortion was performed following the physician's receipt of:

(i) The written informed consent of a parent, guardian or conservator and the minor; or

(ii) The written informed consent of an emancipated minor for herself; or

(iii) The written informed consent of a minor for herself pursuant to a court order granting the minor the right to self-consent; or

(iv) The court order which includes a finding that the performance of the abortion, despite the absence of the consent of a parent, is in the best interests of the minor; or

(v) Certification from the pregnant minor to the attending physician pursuant to section 18-609A, Idaho Code, that parental consent is not required because the pregnancy resulted from rape as defined in section 18-6101, Idaho Code, excepting subsections (1) and (2) thereof, or sexual conduct with the minor by the minor's parent, stepparent, uncle, grandparent, sibling, adoptive parent, legal guardian or foster parent.

(b) If the abortion was performed due to a medical emergency and without consent from a parent, guardian or conservator or court order, the diagnosis upon which the attending physician determined that the abortion was immediately necessary due to a medical emergency.

(2) The knowing failure of the attending physician to perform any one (1) or more of the acts required under this section is grounds for discipline pursuant to section 54-1814(6), Idaho Code, and shall subject the physician

to assessment of a civil penalty of one hundred dollars ($100) for each month or portion thereof that each such failure continues, payable to the bureau of vital statistics of the department of health and welfare, but such failure shall not constitute a criminal act.

History.
I.C., § 18-609G, as added by 2007, ch. 193, § 5, p. 565; am. 2010, ch. 352, § 5, p. 920.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 352, inserted "and (2)" in paragraph (1)(a)(v).

Effective Dates.
Section 8 of S.L. 2007, ch. 193 declared an emergency. Approved March 27, 2007.

18-611. Freedom of conscience for health care professionals. — (1) As used in this section:

(a) "Abortifacient" means any drug that causes an abortion as defined in section 18-604, Idaho Code, emergency contraception or any drug the primary purpose of which is to cause the destruction of an embryo or fetus.

(b) "Conscience" means the religious, moral or ethical principles sincerely held by any person.

(c) "Embryo" means the developing human life from fertilization until the end of the eighth week of gestation.

(d) "Fetus" means the developing human life from the start of the ninth week of gestation until birth.

(e) "Health care professional" means any person licensed, certified or registered by the state of Idaho to deliver health care.

(f) "Health care service" means an abortion, dispensation of an abortifacient drug, human embryonic stem cell research, treatment regimens utilizing human embryonic stem cells, human embryo cloning or end of life treatment and care.

(g) "Provide" means to counsel, advise, perform, dispense, assist in or refer for any health care service.

(h) "Religious, moral or ethical principles," "sincerely held," "reasonably accommodate" and "undue hardship" shall be construed consistently with title VII of the federal civil rights act of 1964, as amended.

(2) No health care professional shall be required to provide any health care service that violates his or her conscience.

(3) Employers of health care professionals shall reasonably accommodate the conscience rights of their employees as provided in this section, upon advanced written notification by the employee. Such notice shall suffice without specification of the reason therefor. It shall be unlawful for any employer to discriminate against any health care professional based upon his or her declining to provide a health care service that violates his or her conscience, unless the employer can demonstrate that such accommodation poses an undue hardship.

(4) No health care professional or employer of the health care professional shall be civilly, criminally or administratively liable for the health care professional declining to provide health care services that violate his or

her conscience, except for life-threatening situations as provided for in subsection (6) of this section.

(5) The provisions of this section do not allow a health care professional or employer of the health care professional to refuse to provide health care services because of a patient's race, color, religion, sex, age, disability or national origin.

(6) If a health care professional invokes a conscience right in a life-threatening situation where no other health care professional capable of treating the emergency is available, such health care professional shall provide treatment and care until an alternate health care professional capable of treating the emergency is found.

(7) In cases where a living will or physician's orders for scope of treatment (POST) is operative, as defined by the medical consent and natural death act, and a physician has a conscience objection to the treatment desired by the patient, the physician shall comply with the provisions of section 39-4513(2), Idaho Code, before withdrawing care and treatment to the patient.

(8) Nothing in this section shall affect the rights of conscience provided for in section 18-612, Idaho Code, to the extent that those rights are broader in scope than those provided for in this section.

History.
I.C., § 18-611, as added by 2010, ch. 127, § 1, p. 273; am. 2011, ch. 225, § 1, p. 612.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 225, added subsection (7) and redesignated former subsection (7) as subsection (8).

Federal References.
Title VII of the federal civil rights act of 1964, referred to in paragraph (1)(h), is codified as 42 U.S.C.S. § 2000e et seq.

Compiler's Notes.
The medical consent and natural death act, referred to in subsection (7), is codified as chapter 45, title 39, Idaho Code.

Section 2 of S.L. 2010, ch. 127 provides: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

S.L. 2010, chapter 127 became law without the signature of the governor, effective July 1, 2010.

18-614. Defenses to prosecution. — (1) No physician shall be subject to criminal or administrative liability for causing or performing an abortion upon a minor in violation of subsection (1) of section 18-609A, Idaho Code, if prior to causing or performing the abortion the physician obtains either positive identification or other documentary evidence from which a reasonable person would have concluded that the woman seeking the abortion was either an emancipated minor or was not then a minor and if the physician retained, at the time of receiving the evidence, a legible photocopy of such evidence in the physician's office file for the woman.

(2) For purposes of this section, "positive identification" means a lawfully issued state, district, territorial, possession, provincial, national or other equivalent government driver's license, identification card or military card,

bearing the person's photograph and date of birth, the person's valid passport or a certified copy of the person's birth certificate.

History.
I.C., § 18-614, as added by 2001, ch. 277 § 4, p. 1000; am. 2007, ch. 193, § 6, p. 565.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 193, in subsection (1), deleted "of any provision" preceding "of subsection (1)" and the last sentence, which formerly read: "This defense is an affirmative defense that shall be raised by the defendant and is not an element of any crime or administrative violation that must be proved by the state"; deleted former subsection (2) and subsection (3), which pertained to medical emergencies; and redesignated former subsection (4) as (2).

Compiler's Notes.
This section was amended by S.L. 2005, ch. 393, § 5, effective upon notification to the Idaho Code Commission that certain conditions had been met. S.L. 2005, Chapter 393 was subsequently repealed by S.L. 2007, ch. 193, § 1, effective March 27, 2007.

Section 7 of S.L. 2007, ch. 193 provided "Severability. If any one or more provision, section, subsection, sentence, clause, phrase or word of this act or the application thereof to any person or circumstance, or application to any other section of Idaho Code is found to be unconstitutional, the same is hereby declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional."

Effective Dates.
Section 8 of S.L. 2007, ch. 193 declared an emergency. Approved March 27, 2007.

18-615. Criminal act to coerce or attempt to coerce a woman to obtain an abortion. — (1) A person violates the provisions of this section when, knowing that a woman is pregnant, and with the intent to induce the pregnant woman to abort, whether by a medical procedure or otherwise:

(a) Threatens to inflict physical injury or death on the pregnant woman; or

(b) Conspires to inflict physical injury or death on the pregnant woman; or

(c) Unlawfully inflicts physical injury on the pregnant woman.

(2) A pregnant woman injured by reason of a person's violation of the provisions of this section may bring a civil suit for recovery of damages for such injury, whether or not the perpetrator is criminally prosecuted or convicted. In such a civil suit, the pregnant woman shall be entitled to recover her reasonable attorney's fees and costs if she is the prevailing party.

(3) Violations of the provisions of this section are classified and punishable as follows:

(a) A violation of subsection (1)(a) or (1)(b) of this section constitutes a misdemeanor punishable by not more than six (6) months in jail, or a fine of not more than one thousand dollars ($1,000), or both.

(b) A violation of subsection (1)(c) of this section constitutes a felony punishable by imprisonment for not more than five (5) years, or a fine of not more than five thousand dollars ($5,000), or both.

(4) The term "physical injury" means a condition of the body, such as a

wound or external or internal injury, whether of a minor or serious nature, caused by physical force.

(5) The term "woman" includes a minor female.

History.
I.C., § 18-615, as added by 2008, ch. 388, § 1, p. 1067.

STATUTORY NOTES

Compiler's Notes.
Former § 18-615 was amended and redesignated as § 18-616 by S.L. 2008, ch. 388, § 2.

18-616. Severability. — If any one (1) or more provision, section, subsection, sentence, clause, phrase, or word of this chapter or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed every section of this chapter and each provision, section, subsection, sentence, clause, phrase or word thereof irrespective of the fact that any one (1) or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

History.
I.C., § 18-615, as added by 2000, ch. 7, § 8, p. 10; am. and redesig. 2008, ch. 388, § 2, p. 1068.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 388, redesignated the section from § 18-615.

JUDICIAL DECISIONS

Unseverability.
Definition of "medical emergency" in Idaho's law governing minors' access to abortion services, § 18-609A, which allowed an abortion without proper consent only when the minor has a medical condition that is sudden, unexpected, and abnormal, is unconstitutionally narrow, and without an adequate medical exception, the parental consent statute is per se unconstitutional; further, no part is salvageable, through a limiting construction, or by operation of the meticulous severability provision under this section. Planned Parenthood of Idaho, Inc. v. Wasden, 376 F.3d 908 (9th Cir. 2004), cert. denied, 544 U.S. 948, 125 S. Ct. 1694, 161 L. Ed. 2d 524 (2005).

CHAPTER 7

ARRESTS AND SEIZURES OF PERSONS OR PROPERTY—SPECIAL OFFICERS

18-705. Resisting and obstructing officers.

JUDICIAL DECISIONS

ANALYSIS

Duty to public.

Evidence.
Probable cause for arrest.
Request of officer lawful and authorized.
Sufficiency of evidence.

Duty to Public.

Trial court erred by denying defendant's motion to suppress drug evidence because the officer's frisk of defendant was unlawful in the circumstances, the officer's subjective feelings could not be relied on to justify the frisk, and evidence that defendant was acting nervous and may have been under the influence of a narcotic did not justify the frisk. Because the frisk was unlawful, it was not a duty under this section and defendant was entitled to peacefully refuse. State v. Bishop, 146 Idaho 804, 203 P.3d 1203 (2009).

Evidence.

Evidence of defendant's alleged battery on an officer and other forceful resistance was not suppressible on the ground that the officer illegally entered defendant's home because the officer did not derive evidence of this new criminal conduct from any exploitation of the unlawful entry. State v. Lusby, 146 Idaho 506, 198 P.3d 735 (Ct. App. 2008).

Probable Cause for Arrest.

Where exigent circumstances existed for the officers to enter a residence without a warrant, defendant's actions in preventing any of the occupants from answering the door or talking to the officers interfered with the officers' attempts to discharge their lawful duties and resulted in probable cause to justify defendant's arrest for obstructing a police officer. State v. Araiza, 147 Idaho 371, 209 P.3d 668 (Ct. App. 2009).

Request of Officer Lawful and Authorized.

Where defendant was resisting arrest and police were not aware of whether he posed an immediate threat to their safety or the safety of others, and the citizen was agitated when he approached them in an aggressive manner, and the officers believed he was under the influence of alcohol, and he was convicted for resisting or obstructing officers in violation of this section as a result of the incident, it was unreasonable to conclude that the officers' conduct was so egregious as to provide notice of a constitutional violation given the circumstances. The incident occurred during a civil disturbance for which the officers were called to establish crowd control and the citizen refused to leave the area after being warned several times — police resorted to the double arm-bar takedown method only after he actively resisted arrest by stepping back into the crowd and pulling his arms back in a defensive manner — the law did not put the officers on notice that their actions were clearly unlawful; therefore, summary judgment based on qualified immunity was proper. Rosenberger v. Kootenai County Sheriff's Dep't, 140 Idaho 853, 103 P.3d 466 (2004).

Despite defendants' contention that city's plan to move remove Ten Commandments monument from public park was in violation of the law, park director was authorized to close a section of the park for safety reasons while monument was being removed, and police officer was authorized to enforce that closure. Defendants had no protected constitutional right to resist and obstruct police officer in the performance of her lawful duty. State v. Gamma, 143 Idaho 751, 152 P.3d 622 (Ct. App. 2006).

Sufficiency of Evidence.

Defendant was properly convicted of misdemeanor resisting a public officer where he refused to exit his vehicle when an officer attempted to arrest him for driving under the influence. State v. Patterson, 140 Idaho 612, 97 P.3d 479 (Ct. App. 2004).

Deputy testified that, after the traffic stop had come to an end, when defendant was walking about conducting his inspection of the patrol car (ostensibly to identify same), he was in the traffic lane at times, and the deputy was concerned that an oncoming driver might not see him. Thus, the state showed at trial that the deputy had a legitimate basis for concern about defendant's personal safety and the safety of approaching drivers; the deputy had the authority, and in fact the duty, to safeguard persons using the highways and the jury could have properly found that the deputy was performing a "duty" of his office when he ordered defendant to return to his own car and that by refusing to comply, defendant violated this section. State v. Hallenbeck, 141 Idaho 596, 114 P.3d 154 (Ct. App. 2005).

CHAPTER 8

ARSON

18-801. Arson — Definitions.

JUDICIAL DECISIONS

Cited in: State v. Shackelford, 150 Idaho 355, 247 P.3d 582 (2010).

18-802. Arson in first degree — Burning of dwelling or other structures where persons are normally present — Penalties.

JUDICIAL DECISIONS

Motive.

Motive was not an element of the crime of first degree arson; therefore, defendant's post-conviction ineffective assistance of counsel claim that his motion to dismiss would have been successful based on the state's inability to present evidence of his motive was without merit. Thomas v. State, 145 Idaho 765, 185 P.3d 921 (Ct. App. 2008).

Cited in: State v. Shackelford, 150 Idaho 355, 247 P.3d 582 (2010).

CHAPTER 9

ASSAULT AND BATTERY

SECTION.
18-902. Assault — Punishment.
18-904. Battery — Punishment.
18-910. Assault with the intent to commit a serious felony — Punishment.
18-912. Battery with the intent to commit a serious felony — Punishment.
18-915. Assault or battery upon certain personnel — Punishment.
SECTION.
18-915C. Battery against health care workers.
18-917A. Student harassment — Intimidation — Bullying.
18-918. Domestic violence.
18-920. Violation of no contact order.
18-923. Attempted strangulation.

18-901. Assault defined.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Instructions.
No breach of plea agreement.
Prosecutorial misconduct.
Sentence.

Applicability.

The requirement of unlawfulness under 11 U.S.C.S. § 507(a)(10), which establishes a tenth-level priority for claims for death or injury resulting from the operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated, could not be established by proof of a violation of § 18-903 or 49-1401 or this section, because intoxication is not a separate element of the offenses covered by those sections. In re Loader, 406 B.R. 72 (Bankr. D. Idaho 2009).

Instructions.

Erroneous jury instruction on the definition of general criminal intent was harmless

where overwhelming evidence showed that defendant's act of firing a pistol across several lanes of traffic at a place where the victims were standing created a well-founded fear in the young victims that they were being threatened with violence. The evidence was sufficient to convict defendant of aggravated assault where, in addition to firing the pistol, defendant pursued the victims into a mall, a shell casing was found near the location where the shot was fired, and a pistol was found near where the defendant was arrested after a high speed police chase. State v. Hansen, 148 Idaho 442, 224 P.3d 509 (Ct. App. 2009).

No Breach of Plea Agreement.

Because the record did not support the conclusion that the victim's mother was presenting testimony at sentencing at the initiative of or on behalf of the state, the court was unable to conclude that the prosecutor acted contrary to the provisions of the plea agreement where defendant pleaded guilty to aggravated assault in violation of § 18-905 and this section. Under Idaho Const., Art. I, § 22(6) and § 19-5306(1)(e), crime victims were guaranteed the right to be heard upon request at sentencing hearings, and the state had informed the trial court that the mother wanted to address the court on behalf of the victim, and the trial court allowed the statement as a victim impact statement, and the issue of whether the trial court erred in allowing the mother to give such a statement was not preserved for review. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

State's recommendation of the longest permissible underlying sentence in defendant's case for aggravated assault in violation of § 18-905 and this section was not inconsistent with the recommendation of retained jurisdiction under § 19-2601 and did not amount to a recommendation against retained jurisdiction; therefore, no breach of the plea agreement was shown. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

Prosecutorial Misconduct.

Where defendant was convicted of aggravated assault for hitting a car windshield with a pickax, which defendant and other witnesses claimed was accidental, a new trial was warranted because (1) the prosecutor's rebuttal argument suggested that jurors ought to respond to the testimony of defendant and witnesses with irritation and resentment, (2) the prosecutor's statements were improper appeals to the jury's passion or prejudice, and (3) the error was not harmless. State v. Phillips, 144 Idaho 82, 156 P.3d 583 (Ct. App. 2007).

Sentence.

Sentence imposed of a unified five-year term with three and one-half years determinate for defendant's aggravated assault conviction under § 18-905 and this section was not excessive; defendant had a substantial criminal record and the record on appeal did not support defendant's claim that the trial court disregarded mitigating factors, and there was also sufficient evidence for the trial court to find that defendant was not suitable for retained jurisdiction or probation, pursuant to § 19-2601, and thus the trial court did not err in finding that retained jurisdiction was inappropriate and that a prison sentence was necessary. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

Cited in: State v. Horejs, 143 Idaho 260, 141 P.3d 1129 (Ct. App. 2006); State v. Mantz, 148 Idaho 303, 222 P.3d 471 (Ct. App. 2009).

RESEARCH REFERENCES

A.L.R. — Comment note: Construction and application of "crime of violence" provision of U.S.S.G. § 2L1.2 pertaining to unlawfully entering or remaining in the United States after commission of felony offense. 68 A.L.R. Fed. 2d 55.

18-902. Assault — Punishment. — An assault is punishable by fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed three (3) months, or by both such fine and imprisonment.

History.

I.C., § 18-902, as added by 1979, ch. 227, § 2, p. 624; am. 1982, ch. 246, § 1, p. 633; am. 2005, ch. 359, § 2, p. 1133.

18-903. Battery defined.

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Evidence.
—Insufficient.
—Sufficient.
Inconsistent verdicts.
Jury instructions.
Prosecutorial misconduct.
Self-incrimination.

Applicability.

The requirement of unlawfulness under 11 U.S.C.S. § 507(a)(10), which establishes a tenth-level priority for claims for death or injury resulting from the operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated, could not be established by proof of a violation of §§ 18-901 or 49-1401 or this section, because intoxication is not a separate element of the offenses covered by those sections. In re Loader, 406 B.R. 72 (Bankr. D. Idaho 2009).

Evidence.

Evidence of defendant's alleged battery on an officer and other forceful resistance was not suppressible on the ground that the officer illegally entered defendant's home because the officer did not derive evidence of this new criminal conduct from any exploitation of the unlawful entry. State v. Lusby, 146 Idaho 506, 198 P.3d 735 (Ct. App. 2008).

—Insufficient.

Trial court's order dismissing a charge of felony domestic battery against defendant was reversed, where the evidence was insufficient to support a finding that a police officer acted in bad faith in the loss of digital photographs of the alleged victim. State v. Casselman, 141 Idaho 592, 114 P.3d 150 (Ct. App. 2005).

—Sufficient.

Evidence was sufficient to support defendant's convictions as an accomplice to aggravated battery, robbery, and burglary. Even though defendant did not actively participate in the actual robbery, he knowingly supplied a loaded gun for use in the robbery, knew about the money that the victim was saving, and exerted influence over his codefendants to perform the deed. State v. Mitchell, 146 Idaho 378, 195 P.3d 737 (Ct. App. 2008).

Inconsistent Verdicts.

While jury's finding that defendant was guilty of aggravated battery, which by definition included the use of a deadly weapon, was certainly inconsistent with its negative decision regarding a deadly weapon sentence enhancement, this bore no relevance to sufficiency of the evidence to uphold a guilty verdict on the aggravated battery charge. State v. Purdie, 144 Idaho 911, 174 P.3d 881 (Ct. App. 2007).

Jury Instructions.

In trial for aggravated battery, it was not reversible error for the court to decline the instruction requested by defendant which stated that he could not be convicted of acts committed through misfortune or accident, where defendant could, consistent with the given instructions, argue his theory. State v. Macias, 142 Idaho 509, 129 P.3d 1258 (Ct. App. 2005).

Prosecutorial Misconduct.

Defendant's conviction for felony domestic violence was appropriate because, while the prosecutor did commit misconduct by misstating the law in closing arguments, defendant failed to object and the misconduct on the part of the prosecutor did not rise to the level of fundamental error. State v. Coffin, 146 Idaho 166, 191 P.3d 244 (Ct. App. 2008).

Self-incrimination.

In prosecution for aggravated battery, district court erred in not declaring a mistrial, since prosecutor's comment that no one had rebutted the state's evidence was a violation of defendant's right against self-incrimination. State v. McMurry, 143 Idaho 312, 143 P.3d 400 (Ct. App. 2006).

Cited in: State v. McNeil, 141 Idaho 383, 109 P.3d 1125 (Ct. App. 2005); State v. Helms, 143 Idaho 79, 137 P.3d 466 (Ct. App. 2006); Law v. City of Post Falls, 772 F. Supp. 2d 1283 (D. Idaho 2011); State v. Peregrina, 151 Idaho 538, 261 P.3d 815 (2011); State v. Moffat, 154 Idaho 529, 300 P.3d 61 (Ct. App. 2013).

RESEARCH REFERENCES

A.L.R. — Comment note: Construction and application of "crime of violence" provision of U.S.S.G. § 2L1.2 pertaining to unlawfully entering or remaining in the United States after commission of felony offense. 68 A.L.R. Fed. 2d 55.

18-904. Battery — Punishment. — Battery is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed six (6) months, or both unless the victim is pregnant and this fact is known to the batterer, in which case the punishment is by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not to exceed one (1) year, or both.

History.
I.C., § 18-904, as added by 1979, ch. 227, § 2, p. 624; am. 1996, ch. 227, § 1, p. 741; am. 2005, ch. 359, § 3, p. 1133.

JUDICIAL DECISIONS

Cited in: State v. Helms, 143 Idaho 79, 137 P.3d 466 (Ct. App. 2006).

18-905. Aggravated assault defined.

JUDICIAL DECISIONS

ANALYSIS

Firearm.
—Enhancement of sentence.
Instructions.
No breach of plea agreement.
Prosecutorial misconduct.
Sentence.

Firearm.

—Enhancement of Sentence.
Defendant's sentence for aggravated assault, with a sentence enhancement for using a deadly weapon during the crime, was vacated and remanded for resentencing without an enhancement as, the finding that defendant used a firearm in committing the assault was not equivalent of a finding needed for deadly weapon enhancement. State v. Donk, 145 Idaho 582, 181 P.3d 508 (Ct. App. 2007).

Instructions.
Erroneous jury instruction on the definition of general criminal intent was harmless where overwhelming evidence showed that defendant's act of firing a pistol across several lanes of traffic at a place where the victims were standing created a well-founded fear in the young victims that they were being threatened with violence. The evidence was sufficient to convict defendant of aggravated assault where, in addition to firing the pistol, defendant pursued the victims into a mall, a shell casing was found near the location where the shot was fired, and a pistol was found near where the defendant was arrested after a high speed police chase. State v. Hansen, 148 Idaho 442, 224 P.3d 509 (Ct. App. 2009).

No Breach of Plea Agreement.
Because the record did not support the conclusion that the victim's mother was presenting testimony at sentencing at the initiative of or on behalf of the state, the court was unable to conclude that the prosecutor acted contrary to the provisions of the plea agreement where defendant pleaded guilty to aggravated assault in violation of § 18-901 and this section. Under Idaho Const., Art. I, § 22(6) and § 19-5306(1)(e), crime victims were guaranteed the right to be heard upon request at sentencing hearings, and the state had informed the trial court that the mother wanted to address the court on behalf of the victim, and the trial court allowed the statement as a victim impact statement, and the issue of whether the trial court erred in allowing the mother to give such a statement was not preserved for review. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

State's recommendation of the longest permissible underlying sentence in defendant's case for aggravated assault in violation of § 18-901 and this section was not inconsistent with the recommendation of retained jurisdiction under § 19-2601 and did not amount to a recommendation against retained jurisdiction; therefore, no breach of the plea agreement was shown. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

Prosecutorial Misconduct.

Where defendant was convicted of aggravated assault for hitting a car windshield with a pickax, which defendant and other witnesses claimed was accidental, a new trial was warranted because (1) the prosecutor's rebuttal argument suggested that jurors ought to respond to the testimony of defendant and witnesses with irritation and resentment, (2) the prosecutor's statements were improper appeals to the jury's passion or prejudice, and (3) the error was not harmless. State v. Phillips, 144 Idaho 82, 156 P.3d 583 (Ct. App. 2007).

Sentence.

Sentence imposed of a unified five-year term with three and one-half years determinate for defendant's aggravated assault conviction under § 18-901 and this section was not excessive; defendant had a substantial criminal record and the record on appeal did not support defendant's claim that the trial court disregarded mitigating factors, and there was also sufficient evidence for the trial court to find that defendant was not suitable for retained jurisdiction or probation, pursuant to § 19-2601, and thus the trial court did not err in finding that retained jurisdiction was inappropriate and that a prison sentence was necessary. State v. Jones, 141 Idaho 673, 115 P.3d 764 (Ct. App. 2005).

Cited in: State v. Mantz, 148 Idaho 303, 222 P.3d 471 (Ct. App. 2009); Law v. City of Post Falls, 772 F. Supp. 2d 1283 (D. Idaho 2011); State v. Curry, 153 Idaho 394, 283 P.3d 141 (Ct. App. 2012).

RESEARCH REFERENCES

A.L.R. — Dog as deadly or dangerous weapon for purposes of statutes aggravating offenses such as assault and robbery. 124 A.L.R.5th 657.

Cigarette lighter as deadly or dangerous weapon. 22 A.L.R.6th 533.

Parts of human body, other than feet, as deadly or dangerous weapons or instrumentalities for purposes of statutes aggravating offenses such as assault and robbery. 67 A.L.R.6th 103.

18-906. Aggravated assault — Punishment.

JUDICIAL DECISIONS

Cited in: State v. Mantz, 148 Idaho 303, 222 P.3d 471 (Ct. App. 2009).

18-907. Aggravated battery defined.

JUDICIAL DECISIONS

Analysis

Evidence.
—Sufficient.
Inconsistent verdicts.
Jury instruction.
Self-incrimination.
Sentence.

Evidence.

—Sufficient.

Evidence was sufficient to support defendant's convictions as an accomplice to aggravated battery, robbery, and burglary. Even though defendant did not actively participate in the actual robbery, he knowingly supplied a loaded gun for use in the robbery, knew about the money that the victim was saving, and

exerted influence over his codefendants to perform the deed. State v. Mitchell, 146 Idaho 378, 195 P.3d 737 (Ct. App. 2008).

Inconsistent Verdicts.

While jury's finding that defendant was guilty of aggravated battery, which by definition included the use of a deadly weapon, was certainly inconsistent with its negative decision regarding a deadly weapon sentence enhancement, this bore no relevance to sufficiency of the evidence to uphold a guilty verdict on the aggravated battery charge. State v. Purdie, 144 Idaho 911, 174 P.3d 881 (Ct. App. 2007).

Jury Instruction.

In trial for aggravated battery, it was not reversible error for the court to decline the instruction requested by defendant which stated that he could not be convicted of acts committed through misfortune or accident, where defendant could, consistent with the given instructions, argue his theory. State v. Macias, 142 Idaho 509, 129 P.3d 1258 (Ct. App. 2005).

Self-incrimination.

In prosecution for aggravated battery, district court erred in not declaring a mistrial, since prosecutor's comment that no one had rebutted the state's evidence was a violation of defendant's right against self-incrimination. State v. McMurry, 143 Idaho 312, 143 P.3d 400 (Ct. App. 2006).

Sentence.

In prosecution for aggravated battery for shooting and severely injuring a state trooper during a traffic stop, it was not error for trial court to enhance defendant's sentence under both §§ 18-915 and 19-2520. State v. Kerrigan, 143 Idaho 185, 141 P.3d 1054 (2006).

Cited in: State v. Lopez, 141 Idaho 575, 114 P.3d 133 (Ct. App. 2005); State v. Helms, 143 Idaho 79, 137 P.3d 466 (Ct. App. 2006); State v. Peregrina, 151 Idaho 538, 261 P.3d 815 (2011).

RESEARCH REFERENCES

A.L.R. — Dog as deadly or dangerous weapon for purposes of statutes aggravating offenses such as assault and robbery. 124 A.L.R.5th 657.

Cigarette lighter as deadly or dangerous weapon. 22 A.L.R.6th 533.

Parts of human body, other than feet, as deadly or dangerous weapons or instrumentalities for purposes of statutes aggravating offenses such as assault and robbery. 67 A.L.R.6th 103.

18-908. Aggravated battery — Punishment.

JUDICIAL DECISIONS

Cited in: State v. Helms, 143 Idaho 79, 137 P.3d 466 (Ct. App. 2006).

18-910. Assault with the intent to commit a serious felony — Punishment. — An assault with the intent to commit a serious felony is punishable by imprisonment in the state prison not to exceed fifteen (15) years.

History.

I.C., § 18-910, as added by 1979, ch. 227, § 2, p. 624; am. 2006, ch. 178, § 1, p. 545.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 178, substituted "fifteen (15) years" for "ten (10) years."

Effective Dates.

Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

18-912. Battery with the intent to commit a serious felony — Punishment. — A battery with the intent to commit a serious felony is

punishable by imprisonment in the state prison not to exceed twenty (20) years.

History.
I.C., § 18-912, as added by 1979, ch. 227, § 2, p. 624; am. 2006, ch. 178, § 2, p. 545.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 178, substituted "twenty (20) years" for "fifteen (15) years."

Effective Dates.
Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

18-915. Assault or battery upon certain personnel — Punishment. — (1) Any person who commits a crime provided for in this chapter against or upon a justice, judge, magistrate, prosecuting attorney, public defender, peace officer, bailiff, marshal, sheriff, police officer, peace officer standards and training employee involved in peace officer decertification activities, emergency services dispatcher, correctional officer, employee of the department of correction, employee of a private prison contractor while employed at a private correctional facility in the state of Idaho, employees of the department of water resources authorized to enforce the provisions of chapter 38, title 42, Idaho Code, jailer, parole officer, misdemeanor probation officer, officer of the Idaho state police, fireman, social caseworkers or social work specialists of the department of health and welfare, employee of a state secure confinement facility for juveniles, employee of a juvenile detention facility, a teacher at a detention facility or a juvenile probation officer, emergency medical services personnel licensed under the provisions of chapter 10, title 56, Idaho Code, a member, employee or agent of the state tax commission, United States marshal, or federally commissioned law enforcement officer or their deputies or agents and the perpetrator knows or has reason to know of the victim's status, the punishment shall be as follows:

(a) For committing battery with intent to commit a serious felony the punishment shall be imprisonment in the state prison not to exceed twenty-five (25) years.

(b) For committing any other crime in this chapter the punishment shall be doubled that provided in the respective section, except as provided in subsections (2) and (3) of this section.

(2) For committing a violation of the provisions of section 18-901 or 18-903, Idaho Code, against the person of a former or present justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a county jail, or of a private correctional facility, or of an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer:

(a) Because of the exercise of official duties or because of the victim's former or present official status; or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that

such victim is a justice, judge or magistrate, jailer or correctional officer or other staff of the department of correction, or of a private correctional facility, an employee of a state secure confinement facility for juveniles, an employee of a juvenile detention facility, a teacher at a detention facility, misdemeanor probation officer or a juvenile probation officer;

the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

(3) For committing a violation of the provisions of section 18-903, Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a former or present peace officer, sheriff or police officer:

(a) Because of the exercise of official duty or because of the victim's former or present official status; or

(b) While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a peace officer, sheriff or police officer;

the offense shall be a felony punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.

History.

I.C., § 18-915, as added by 1979, ch. 227, § 2, p. 624; am. 1981, ch. 263, § 2, p. 559; am. 1992, ch. 221, § 1, p. 670; am. 1995, ch. 51, § 1, p. 118; am. 1999, ch. 247, § 1, p. 635; am. 2000, ch. 272, § 3, p. 786; am. 2000, ch. 297, § 3, p. 1025; am. 2000, ch. 469, § 21, p. 1450; am. 2001, ch. 181, § 1, p. 609; am. 2008, ch. 88, § 1, p. 242; am. 2008, ch. 151, § 1, p. 439; am. 2009, ch. 11, § 5, p. 14; am. 2011, ch. 9, § 1, p. 20.

STATUTORY NOTES

Amendments.

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 88, near the middle of the introductory paragraph [now subsection (1)] and twice in subsection (c) [now the introductory paragraph in subsection (2)], inserted "misdemeanor probation officer."

The 2008 amendment, by ch. 151, rewrote the section to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 11, inserted "misdemeanor probation officer" near the end of subsection (2)(b).

The 2011 amendment, by ch. 9, in the introductory paragraph of subsection (1), inserted "peace officer standards and training employee involved in peace officer decertification activities, emergency services dispatcher" near the beginning and substituted "emergency medical services personnel licensed under the provisions of chapter 10, title 56, Idaho Code" for "emergency medical technician certified by the department of health and welfare, emergency medical technician-ambulance certified by the department of health and welfare, advanced emergency medical technician and EMT-paramedic certified by the state board of medicine" near the end.

JUDICIAL DECISIONS

Analysis

Peace officer.
Sentence.

Peace Officer.

Defendant's conviction and sentence, pursuant to this section, for battery on a peace officer were proper because the evidence was

sufficient to show that the victim, who was an inmate with defendant, was a former bailiff and peace officer as defined by §§ 19-5101 and 19-5109. State v. Herrera, 152 Idaho 24, 266 P.3d 499 (Ct. App. 2011).

Sentence.

In prosecution for aggravated battery for shooting and severely injuring a state trooper during a traffic stop, it was not error for trial court to enhance defendant's sentence under both § 19-2520 and this section. State v. Kerrigan, 143 Idaho 185, 141 P.3d 1054 (2006).

Cited in: State v. Lusby, 146 Idaho 506, 198 P.3d 735 (Ct. App. 2008).

RESEARCH REFERENCES

A.L.R. — When is federal officer assaulted "while engaged in, or on account of, performance of official duties" for purposes of offense of assaulting, resisting, or impeding federal officer under 18 USCS § 111. 36 A.L.R. Fed. 2d 475.

18-915C. Battery against health care workers. — Any person who commits battery as defined in section 18-903, Idaho Code, against or upon any person licensed, certified or registered by the state of Idaho to provide health care, or an employee of a hospital, medical clinic or medical practice, when the victim is in the course of performing his or her duties or because of the victim's professional or employment status under this statute, shall be subject to imprisonment in the state prison not to exceed three (3) years.

History.

I.C., § 18-915C, as added by 2014, ch. 288, § 1, p. 729.

18-917A. Student harassment — Intimidation — Bullying. — (1) No student shall intentionally commit, or conspire to commit, an act of harassment, intimidation or bullying against another student.

(2) As used in this section, "harassment, intimidation or bullying" means any intentional gesture, or any intentional written, verbal or physical act or threat by a student that:

(a) A reasonable person under the circumstances should know will have the effect of:

(i) Harming a student; or

(ii) Damaging a student's property; or

(iii) Placing a student in reasonable fear of harm to his or her person; or

(iv) Placing a student in reasonable fear of damage to his or her property; or

(b) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for a student.

An act of harassment, intimidation or bullying may also be committed through the use of a land line, car phone or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

(3) A student who personally violates any provision of this section may be guilty of an infraction.

History.
I.C., § 18-917A, as added by 2006, ch. 313, § 3, p. 969.

18-918. Domestic violence. — (1) For the purpose of this section:

(a) "Household member" means a person who is a spouse, former spouse, or a person who has a child in common regardless of whether they have been married or a person with whom a person is cohabiting, whether or not they have married or have held themselves out to be husband or wife.

(b) "Traumatic injury" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by physical force.

(2)(a) Any household member who in committing a battery, as defined in section 18-903, Idaho Code, inflicts a traumatic injury upon any other household member is guilty of a felony.

(b) A conviction of felony domestic battery is punishable by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000) or by both fine and imprisonment.

(3)(a) A household member who commits an assault, as defined in section 18-901, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic assault.

(b) A household member who commits a battery, as defined in section 18-903, Idaho Code, against another household member which does not result in traumatic injury is guilty of a misdemeanor domestic battery.

(c) A first conviction under this subsection (3) is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in a county jail not to exceed six (6) months, or both. Any person who pleads guilty to or is found guilty of a violation of this subsection (3) who previously has pled guilty to or been found guilty of a violation of this subsection (3), or of any substantially conforming foreign criminal violation, notwithstanding the form of the judgment or withheld judgment, within ten (10) years of the first conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for a term not to exceed one (1) year or by a fine not exceeding two thousand dollars ($2,000) or by both fine and imprisonment. Any person who pleads guilty to or is found guilty of a violation of this subsection (3) who previously has pled guilty to or been found guilty of two (2) violations of this subsection (3), or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within fifteen (15) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000) or by both fine and imprisonment.

(4) The maximum penalties provided in this section shall be doubled where the act of domestic assault or battery for which the person is convicted or pleads guilty took place in the presence of a child. For purposes of this section, "in the presence of a child" means in the physical presence of a child or knowing that a child is present and may see or hear an act of

domestic assault or battery. For purposes of this section, "child" means a person under sixteen (16) years of age.

(5) Notwithstanding any other provisions of this section, any person who previously has pled guilty to or been found guilty of a felony violation of the provisions of this section or of any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment or withheld judgment, and who within fifteen (15) years pleads guilty to or is found guilty of any further violation of this section, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000), or by both such fine and imprisonment.

(6) For the purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(7)(a) Any person who pleads guilty to or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, agency or organization approved by the court in accordance with paragraph (c) of this subsection to determine whether the defendant should be required to obtain aggression counseling or other appropriate treatment. Such evaluation shall be completed prior to the sentencing date if the court's list of approved evaluators, in accordance with paragraph (c) of this subsection, contains evaluators who are able to perform the evaluation prior to the sentencing dates. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling or treatment considered appropriate for the defendant, together with the estimated costs thereof, and shall recommend any other suitable alternative counseling or treatment programs, together with the estimated costs thereof. The defendant shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that counseling is required unless the defendant makes a showing by a preponderance of evidence that counseling is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If counseling or other treatment is ordered, in no event shall the person, agency or organization doing the evaluation be the person, agency or organization that provides the counseling or other treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the

use of funds authorized for court-ordered counseling or treatment pursuant to this section for indigent defendants as provided by law. In the event that funding is provided for or on behalf of the defendant by a governmental entity, the defendant shall be ordered to make restitution to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code.

(b) If the evaluation recommends counseling or other treatment, the court shall order the person to complete the counseling or other treatment in addition to any other sentence which may be imposed. If the court determines that counseling or treatment would be inappropriate or undesirable, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such counseling or treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation or a comparable program. Nothing contained in this subsection shall be construed as requiring a court to order that counseling or treatment be provided at government expense unless otherwise required by law.

(c) Each judicial district shall by rule establish a uniform system for the qualification and approval of persons, agencies or organizations to perform the evaluations required in this subsection. Only qualified evaluators approved by the court shall be authorized to perform such evaluations. Funds to establish a system for approval of evaluators shall be derived from moneys designated therefor and deposited in the district court fund as provided in section 31-3201A(16), Idaho Code.

(d) Counseling or treatment ordered pursuant to this section shall be conducted according to standards established or approved by the Idaho council on domestic violence.

History.

I.C., § 18-918, as added by 1993, ch. 344, § 1, p. 1283; am. 1995, ch. 223, § 1, p. 770; am. 1996, ch. 228, § 1, p. 742; am. 1998, ch. 309, § 1, p. 1026; am. 1998, ch. 420, § 1, p. 1323; am. 2000, ch. 358, § 1, p. 1193; am. 2003, ch. 237, § 1, p. 607; am. 2004, ch. 118, § 1, p. 392; am. 2005, ch. 158, § 1, p. 488; am. 2009, ch. 80, § 3, p. 221.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 80, updated the section reference in subsection (7)(c) to reflect the 2009 amendment of § 31-3201A.

JUDICIAL DECISIONS

Analysis

Appeal.
Double jeopardy.
Evidence.
—Insufficient.
Household members.
Informing defendant of offense charged.
Jury instructions.

Prosecutorial misconduct.
Willfully.

Appeal.

Where the magistrate judge convicted defendant of misdemeanor domestic battery, the district court ruled that the magistrate erred by applying the beyond a reasonable doubt standard to defendant's self-defense claim. The case was remanded to the magistrate to reconsider the testimony applying the correct burden of proof; a new trial was not required. State v. Jones, 146 Idaho 297, 193 P.3d 457 (Ct. App. 2008).

Double Jeopardy.

Defendant's double jeopardy rights were violated when he was tried and and convicted for attempted strangulation under § 18-923 subsequent to entering a guilty plea to a misdemeanor domestic battery charge under this section, where both charges arose from a single criminal episode. The offense of misdemeanor domestic battery does not contain an element that the offense of attempted strangulation does not and attempting to separate defendant's act of grabbing his girlfriend's hair and throwing her to the floor from his grabbing her throat, in the same dispute, was not permissible. State v. Moffat, 154 Idaho 529, 300 P.3d 61 (Ct. App. 2013).

Evidence.

—Insufficient.

Trial court's order dismissing a charge of felony domestic battery against defendant was reversed, where the evidence was insufficient to support a finding that a police officer acted in bad faith in the loss of digital photographs of the alleged victim. State v. Casselman, 141 Idaho 592, 114 P.3d 150 (Ct. App. 2005).

Household Members.

Evidence was sufficient to prove that defendant and the victim were cohabiting at the time defendant battered the victim, such that the attack constituted domestic violence; although defendant was not paying household expenses, he was using the premises as his home and acknowledged to a police officer that he lived there. State v. Hansell, 141 Idaho 587, 114 P.3d 145 (Ct. App. 2005).

An information alleging violation of this section and charging defendant with felony domestic battery and attempted strangulation of his 15-year-old daughter was dismissed. The definition of "household member" in paragraph (1)(a) plainly limits its application to intimate partners and does not extend to a child living with her father. State v. Schulz, 151 Idaho 863, 264 P.3d 970 (2011).

Informing Defendant of Offense Charged.

Information alleging that defendant inflicted a traumatic injury upon another household member by striking her in the face and body resulting in traumatic injury was factually sufficient to charge defendant with the crime of domestic battery. State v. Sohm, 140 Idaho 458, 95 P.3d 76 (Ct. App. 2004).

Jury Instructions.

Defendant's conviction for felony domestic violence was vacated where the court gave jury instructions that did not adequately state the applicable law and diminished the state's burden of proof on the mental element of the offense. State v. Sohm, 140 Idaho 458, 95 P.3d 76 (Ct. App. 2004).

District court erred in not instructing the jury that in order to find defendant guilty, they had to find that he willfully inflicted a traumatic injury upon the victim; however, the error was harmless because there was no evidence in the record that could rationally lead to a finding in favor of defendant with respect to the omitted element. State v. Hansell, 141 Idaho 587, 114 P.3d 145 (Ct. App. 2005).

In a prosecution for felony domestic battery, the court erred in refusing to give requested instructions on misdemeanor domestic battery and false imprisonment, because they were lesser included offenses. However, the error was harmless under the "acquittal first" rule, because the jury convicted the defendant of the greater offenses. State v. Joy, — Idaho —, 304 P.3d 276 (2013).

Prosecutorial Misconduct.

Defendant's conviction for felony domestic violence was appropriate because, while the prosecutor did commit misconduct by misstating the law in closing arguments, defendant failed to object and the misconduct on the part of the prosecutor did not rise to the level of fundamental error. State v. Coffin, 146 Idaho 166, 191 P.3d 244 (Ct. App. 2008).

Willfully.

It is apparent from the context of § 18-918(3) [now (2)(a)] that the Idaho Code § 18-101(1) definition of "wilfully" does not apply. State v. Sohm, 140 Idaho 458, 95 P.3d 76 (Ct. App. 2004).

To establish a violation of § 18-918(3) [now (2)(a)], the state must prove that the defendant willfully inflicted injury, though it need not be shown that the defendant intended the precise injury that the victim sustained. State v. Sohm, 140 Idaho 458, 95 P.3d 76 (Ct. App. 2004).

Cited in: Schultz v. Schultz, 145 Idaho 859, 187 P.3d 1234 (2008).

RESEARCH REFERENCES

Idaho Law Review. — The Efficacy of Idaho's Domestic Violence Courts: An Opportunity for the Court System to Effect Social Change, Comment. 48 Idaho L. Rev. 587 (2012).

18-920. Violation of no contact order. — (1) When a person is charged with or convicted of an offense under section 18-901, 18-903, 18-905, 18-907, 18-909, 18-911, 18-913, 18-915, 18-918, 18-919, 18-6710, 18-6711, 18-7905, 18-7906 or 39-6312, Idaho Code, or any other offense for which a court finds that a no contact order is appropriate, an order forbidding contact with another person may be issued. A no contact order may be imposed by the court or by Idaho criminal rule.

(2) A violation of a no contact order is committed when:

(a) A person has been charged or convicted under any offense defined in subsection (1) of this section; and

(b) A no contact order has been issued, either by a court or by an Idaho criminal rule; and

(c) The person charged or convicted has had contact with the stated person in violation of an order.

(3) A violation of a no contact order is punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or both. Any person who pleads guilty to or is found guilty of a violation of this section who previously has pled guilty to or been found guilty of two (2) violations of this section, or of any substantially conforming foreign criminal violation or any combination thereof, notwithstanding the form of the judgment or withheld judgment, within five (5) years of the first conviction, shall be guilty of a felony and shall be punished by imprisonment in the state prison for a term not to exceed five (5) years or by a fine not to exceed five thousand dollars ($5,000), or by both fine and imprisonment. No bond shall be set for this violation until the person charged is brought before the court which will set bond. Further, any such violation may result in the increase, revocation or modification of the bond set in the underlying charge for which the no contact order was imposed.

(4) A peace officer may arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a no contact order issued under this section if the person restrained had notice of the order.

(5) For purposes of this section, a substantially conforming foreign criminal violation exists when a person has pled guilty to or been found guilty of a violation of any federal law or law of another state, or any valid county, city or town ordinance of another state, substantially conforming with the provisions of this section. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

History.

I.C., § 18-920, as added by 1997, ch. 314, § 1, p. 929; am. 1998, ch. 353, § 1, p. 1111; am. 2000, ch. 146, § 1, p. 374; am. 2000, ch. 239, § 1, p. 669; am. 2004, ch. 337, § 1, p. 1007; am. 2008, ch. 259, § 1, p. 752.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 259, added the second sentence in subsection (3) and added subsection (5).

JUDICIAL DECISIONS

ANALYSIS

Contact.
Elements of offense.

Contact.
By its plain language, subsection (2) of this section only criminalizes violations of a no contact order where the violation was contact in the form of physical touching and/or communicating. State v. Herren, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 67 (Ct. App. Nov. 9, 2012).

Elements of Offense.
Although this section does not explicitly list prior notice of the no contact order as an element of the offense, such notice is an essential element of the crime, as stated in Idaho Criminal Rule 46.2, which implements this section. State v. Hochrein, 154 Idaho 993, 303 P.3d 1249 (Ct. App. 2013).

Where defendant stipulated to all elements of the offense, except whether he was at the victim's home at the time of the charged offense, which he contested at trial, the defendant's knowledge of an existing no contact order may be presumed to have been stipulated. State v. Hochrein, 154 Idaho 993, 303 P.3d 1249 (Ct. App. 2013).

18-923. Attempted strangulation. — (1) Any person who willfully and unlawfully chokes or attempts to strangle a household member, or a person with whom he or she has or had a dating relationship, is guilty of a felony punishable by incarceration for up to fifteen (15) years in the state prison.

(2) No injuries are required to prove attempted strangulation.

(3) The prosecution is not required to show that the defendant intended to kill or injure the victim. The only intent required is the intent to choke or attempt to strangle.

(4) "Household member" assumes the same definition as set forth in section 18-918(1)(a), Idaho Code.

(5) "Dating relationship" assumes the same definition as set forth in section 39-6303(2), Idaho Code.

History.
I.C., § 18-923, as added by 2005, ch. 303, § 1, p. 950.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2005, ch. 303 declared an emergency. Approved April 6, 2005.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Double jeopardy.
Household member.

Constitutionality.

Neither the term "dating relationship", incorporated into this section from § 39-6303, nor the definition of the crime's mental element in this section was facially vague. State v. Laramore, 145 Idaho 428, 179 P.3d 1084 (Ct. App. 2007).

Double Jeopardy.

Defendant's double jeopardy rights were violated when he was tried and and convicted for attempted strangulation under this section subsequent to entering a guilty plea to a misdemeanor domestic battery charge under § 18-918, where both charges arose from a single criminal episode. The offense of misdemeanor domestic battery does not contain an element that the offense of attempted strangulation does not and attempting to separate defendant's act of grabbing his girlfriend's hair and throwing her to the floor from his grabbing her throat, in the same dispute, was not permissible. State v. Moffat, 154 Idaho 529, 300 P.3d 61 (Ct. App. 2013).

Household Member.

An information alleging violation of this section and charging defendant with felony domestic battery and attempted strangulation of his 15-year-old daughter was dismissed. The definition of "household member" in § 18-918(1)(a) plainly limits its application to intimate partners and does not extend to a child living with her father. State v. Schulz, 151 Idaho 863, 264 P.3d 970 (2011).

CHAPTER 11

BIGAMY AND POLYGAMY

18-1101. Bigamy defined.

RESEARCH REFERENCES

A.L.R. — Validity of bigamy and polygamy statutes and constitutional provisions. 22 A.L.R.6th 1.

CHAPTER 13

BRIBERY AND CORRUPTION

SECTION.
18-1351. Bribery and corrupt practices — Definitions.
18-1356. Gifts to public servants by persons subject to their jurisdiction.
SECTION.
18-1359. Using public position for personal gain.

18-1351. Bribery and corrupt practices — Definitions. — Unless a different meaning plainly is required in this chapter:

(1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose. "Benefit" does not include an award with economic significance of five hundred dollars ($500) or less given to a nonelected public servant by a nonprofit organization whose membership is limited to public servants as part of a public servant recognition program that is designed to recognize innovation and achievement in the workplace, provided that the organization discloses in advance on its website the nature of the program, the amount of the award, the names of any persons or entities that contributed to the award and the recipient of the award.

(2) "Confidential information" means knowledge gained through a public office, official duty or employment by a governmental entity which is not subject to disclosure to the general public and which, if utilized in financial transactions would provide the user with an advantage over those not having such information or result in harm to the governmental entity from which it was obtained.

(3) "Government" includes any branch, subdivision or agency of the government of the state or any locality within it and other political subdivisions including, but not limited to, highway districts, planning and zoning commissions and cemetery districts, and all other governmental districts, commissions or governmental bodies not specifically mentioned in this chapter.

(4) "Harm" means loss, disadvantage or injury, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested.

(5) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

(6) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility.

(7) "Pecuniary benefit" is any benefit to a public official or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.

(8) "Public servant" means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses.

(9) "Administrative proceeding" means any proceeding, other than a judicial proceeding, the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

History.
1972, ch. 381, § 20, p. 1102; am. 1990, ch. 328, § 1, p. 899; am. 2010, ch. 169, § 1, p. 345.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 169, added the last sentence in subsection (1).

18-1356. Gifts to public servants by persons subject to their jurisdiction. — (1) Regulatory and law enforcement officials. No public servant in any department or agency exercising regulatory functions, or conducting inspections or investigations, or carrying on civil or criminal litigation on behalf of the government, or having custody of prisoners, shall solicit, accept or agree to accept any pecuniary benefit from a person known

to be subject to such regulation, inspection, investigation or custody, or against whom such litigation is known to be pending or contemplated.

(2) Officials concerned with government contracts and pecuniary transactions. No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims or other pecuniary transactions of the government shall solicit, accept or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim or transaction.

(3) Judicial and administrative officials. No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority, or participating in the enforcement of its decisions, shall solicit, accept or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or a tribunal with which he is associated.

(4) Legislative and executive officials. No legislator or public servant shall solicit, accept or agree to accept any pecuniary benefit in return for action on a bill, legislation, proceeding or official transaction from any person known to be interested in a bill, legislation, official transaction or proceeding.

(5) Exceptions. This section shall not apply to:

(a) fees prescribed by law to be received by a public servant, or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise legally entitled; or

(b) gifts or other benefits conferred on account of kinship or other personal, professional or business relationship independent of the official status of the receiver; or

(c) trivial benefits not to exceed a value of fifty dollars ($50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality; or

(d) benefits received as a result of lobbying activities that are disclosed in reports required by chapter 66, title 67, Idaho Code. This exception shall not apply to any activities prohibited by subsections (1) through (4) of this section.

(6) Offering benefits prohibited. No person shall knowingly confer, or offer or agree to confer, any benefit prohibited by the foregoing subsections.

(7) Grade of offense. An offense under this section is a misdemeanor and shall be punished as provided in this chapter.

History.

1972, ch. 381, § 20, p. 1102; am. 1990, ch. 328, § 3, p. 899; am. 2008, ch. 306, § 4, p. 851.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 306, in subsection (4), inserted "and executive" in the heading and deleted "employed by the legislature or by any committee or agency thereof" following "public servant" and "pending or contemplated before the legislature or any

committee or agency thereof" from the end;
and added paragraph (5)(d).

18-1359. Using public position for personal gain. — (1) No public servant shall:

(a) Without the specific authorization of the governmental entity for which he serves, use public funds or property to obtain a pecuniary benefit for himself.

(b) Solicit, accept or receive a pecuniary benefit as payment for services, advice, assistance or conduct customarily exercised in the course of his official duties. This prohibition shall not include trivial benefits not to exceed a value of fifty dollars ($50.00) incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(c) Use or disclose confidential information gained in the course of or by reason of his official position or activities in any manner with the intent to obtain a pecuniary benefit for himself or any other person or entity in whose welfare he is interested or with the intent to harm the governmental entity for which he serves.

(d) Be interested in any contract made by him in his official capacity, or by any body or board of which he is a member, except as provided in section 18-1361, Idaho Code.

(e) Appoint or vote for the appointment of any person related to him by blood or marriage within the second degree, to any clerkship, office, position, employment or duty, when the salary, wages, pay or compensation of such appointee is to be paid out of public funds or fees of office, or appoint or furnish employment to any person whose salary, wages, pay or compensation is to be paid out of public funds or fees of office, and who is related by either blood or marriage within the second degree to any other public servant when such appointment is made on the agreement or promise of such other public servant or any other public servant to appoint or furnish employment to anyone so related to the public servant making or voting for such appointment. Any public servant who pays out of any public funds under his control or who draws or authorizes the drawing of any warrant or authority for the payment out of any public fund of the salary, wages, pay, or compensation of any such ineligible person, knowing him to be ineligible, is guilty of a misdemeanor and shall be punished as provided in this chapter.

(f) Unless specifically authorized by another provision of law, commit any act prohibited of members of the legislature or any officer or employee of any branch of the state government by section 67-5726, Idaho Code, violations of which are subject to penalties as provided in section 67-5734, Idaho Code, which prohibition and penalties shall be deemed to extend to all public servants pursuant to the provisions of this section.

(2) No person related to any member of the legislature by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty within the legislative branch of government or otherwise be employed by the legislative branch of government

when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(3) No person related to a mayor or member of a city council by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the mayor's or city council's city when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(4) No person related to a county commissioner by blood or marriage within the second degree shall be appointed to any clerkship, office, position, employment or duty with the commissioner's county when the salary, wages, pay or compensation of such appointee or employee is to be paid out of public funds.

(5)(a) An employee of a governmental entity holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position and receive general pay increases, step increases, cost of living increases, and/or other across the board increases in salary or merit increases, benefits and bonuses or promotions.

(b) Nothing in this section shall be construed as creating any property rights in the position held by an employee subject to this section, and all authority in regard to disciplinary action, transfer, dismissal, demotion or termination shall continue to apply to the employee.

(6) The prohibitions contained within this section shall not include conduct defined by the provisions of section 59-703(4), Idaho Code.

(7) The prohibitions within this section and section 18-1356, Idaho Code, as it applies to part-time public servants, do not include those actions or conduct involving the public servant's business, profession or occupation and unrelated to the public servant's official conduct, and do not apply to a pecuniary benefit received in the normal course of a legislator's business, profession or occupation and unrelated to any bill, legislation, proceeding or official transaction.

History.

I.C., § 18-1359, as added by 1990, ch. 328, § 2, p. 899; am. 1991, ch. 305, § 1, p. 800; am. 2002, ch. 304, § 1, p. 867; am. 2004, ch. 316, § 1, p. 887; am. 2005, ch. 214, § 1, p. 684.

CHAPTER 14

BURGLARY

18-1401. Burglary defined.

JUDICIAL DECISIONS

ANALYSIS

Building.
Construction.
Evidence.
—Sufficient.
Intent.
Sentence.

Building.

Absence of more particular terms of description in the burglary statute indicates an intention on the part of the legislature to include every kind of building or structure. State v. Tarrant-Folsom, 140 Idaho 556, 96 P.3d 657 (Ct. App. 2004).

For purposes of the burglary state, the term "building" should be read broadly. State v. Tarrant-Folsom, 140 Idaho 556, 96 P.3d 657 (Ct. App. 2004).

Rather than limiting the definition of a building to a structure with walls and a roof; for purposes of the burglary statute, it is the legislative intent that a building is a structure which has a capacity to contain, and is designed for the habitation of man or animals, or the sheltering of property. State v. Tarrant-Folsom, 140 Idaho 556, 96 P.3d 657 (Ct. App. 2004).

Construction.

Burglary statute is interpreted broadly, rather than narrowly, so as to protect structures that shelter people, animals, and property. State v. Tarrant-Folsom, 140 Idaho 556, 96 P.3d 657 (Ct. App. 2004).

Defendant's actions in entering a cab-over farm truck by unlatching the cab and pushing it forward, exposing the engine compartment violated this section; by opening the cab, defendant broke a barrier of the vehicle that was closed to the public. State v. Sexton-Gwin, 154 Idaho 646, 301 P.3d 652 (Ct. App. 2013).

Evidence.

Defendant was properly convicted of aiding and abetting in the commission of a burglary where the state's witness testified he had seen a man and woman taking items from storage containers behind the pawnshop, and police found stolen items from the pawnshop in the residence defendant shared with her husband and in the trunk of their car. State v. Tarrant-Folsom, 140 Idaho 556, 96 P.3d 657 (Ct. App. 2004).

As the evidence was insufficient to support an inference beyond a reasonable doubt that defendant had a deadly weapon with which he assaulted a victim for purposes of supporting his conviction for aggravated assault, his conviction for burglary based on the theory that he entered a garage with the intent to commit aggravated assault also could not be sustained. State v. Curry, 153 Idaho 394, 283 P.3d 141 (Ct. App. 2012).

—Sufficient.

Evidence was sufficient to support defendant's convictions as an accomplice to aggravated battery, robbery, and burglary. Even though defendant did not actively participate in the actual robbery, he knowingly supplied a loaded gun for use in the robbery, knew about the money that the victim was saving, and exerted influence over his codefendants to perform the deed. State v. Mitchell, 146 Idaho 378, 195 P.3d 737 (Ct. App. 2008).

Intent.

Trial court properly admitted evidence of defendant's prior thefts from other area stores because it was probative of his intent to commit theft upon entering the store on the day in question. State v. Brummett, 150 Idaho 339, 247 P.3d 204 (Ct. App. 2010).

Sentence.

Where retained jurisdiction had expired and divested the district court of jurisdiction to enter orders relating to defendant's sentence, the order revoking probation and ordering into execution the previously imposed sentence for burglary had to be affirmed. State v. Diggie, 140 Idaho 238, 91 P.3d 1142 (Ct. App. 2004).

Cited in: State v. Piro, 141 Idaho 543, 112 P.3d 831 (Ct. App. 2005); State v. Culbreth, 146 Idaho 322, 193 P.3d 869 (Ct. App. 2008); State v. Barnes, 147 Idaho 587, 212 P.3d 1017 (Ct. App. 2009); State v. Marsh, 153 Idaho 360, 283 P.3d 107 (Ct. App. 2011).

CHAPTER 15

CHILDREN AND VULNERABLE ADULTS

SECTION.

18-1501. Injury to children.
18-1502C. Possession of marijuana or drug paraphernalia by a minor — Use of controlled substances — Fines.
18-1505. Abuse, exploitation or neglect of a vulnerable adult.
18-1505A. Abandoning a vulnerable adult.
18-1505B. Sexual abuse and exploitation of a vulnerable adult.
18-1506. Sexual abuse of a child under the age of sixteen years.
18-1506A. Ritualized abuse of a child — Exclusions — Penalties — Definition.
18-1507. Definitions — Sexual exploitation of

SECTION.
a child — Penalties.
18-1507A. Possession of sexually exploitative material for other than a commercial purpose — Penalty. [Repealed.]
18-1508A. Sexual battery of a minor child sixteen or seventeen years of age — Penalty.
18-1509A. Enticing a child through use of the internet or other communication device — Penalties — Jurisdiction.

18-1501. Injury to children. — (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one (1) year, or in the state prison for not less than one (1) year nor more than ten (10) years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(3) A person over the age of eighteen (18) years commits the crime of injury to a child if the person transports a minor in a motor vehicle or vessel as defined in section 67-7003, Idaho Code, while under the influence of alcohol, intoxicating liquor, a controlled substance, or any combination thereof, in violation of section 18-8004 or 67-7034, Idaho Code. Any person convicted of violating this subsection is guilty of a misdemeanor. If a child suffers bodily injury or death due to a violation of this subsection, the violation will constitute a felony punishable by imprisonment for not more than ten (10) years, unless a more severe penalty is otherwise prescribed by law.

(4) The practice of a parent or guardian who chooses for his child treatment by prayer or spiritual means alone shall not for that reason alone be construed to have violated the duty of care to such child.

(5) As used in this section, "willfully" means acting or failing to act where a reasonable person would know the act or failure to act is likely to result in injury or harm or is likely to endanger the person, health, safety or well-being of the child.

History.
I.C., § 18-1501, as added by 1977, ch. 304, § 3, p. 852; am. 1996, ch. 167, § 1, p. 552; am. 1997, ch. 306, § 1, p. 910; am. 2001, ch. 49, § 1, p. 91; am. 2005, ch. 151, § 1, p. 467.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2005, ch. 151 declared an emergency. Approved March 25, 2005.

JUDICIAL DECISIONS

ANALYSIS

Evidence.
—Hearsay statements of child.
Probation.
Sentence.
Sentence upheld.
Sufficiency of evidence.
Sufficiency of indictment.
"Willfully permit".

Evidence.

—Hearsay Statements of Child.

In a felony injury to a child case, the court properly admitted the child's hearsay statements to a neighbor, even though they were not spontaneous. Given the child's young age, proximity to the physical altercation, and ongoing emotional upset, the statements were the product of the startling events and not the child's normal reflective thought process. State v. Timmons, 145 Idaho 279, 178 P.3d 644 (Ct. App. 2007).

Probation.

While on probation for felony injury to a child, defendant was convicted of 14 counts of grand theft. Her probation was revoked, 10 years were imposed on the felony injury charge, and 5 years consecutive on each of the theft charges. Felony injury sentence was not unduly harsh, but consecutive sentences for each of the theft charges were considered excessive. State v. Whittle, 145 Idaho 49, 175 P.3d 211 (Ct. App. 2007).

Sentence.

Defendant was properly convicted of felony injury to a child in connection with the death of an infant and was sentenced to life imprisonment with a 25-year minimum term. Newman v. State, 140 Idaho 491, 95 P.3d 642 (Ct. App. 2004).

In trial for injury to a child, trial court did not err in denying defendant's motion for reduction in unified sentence of 10 years imprisonment with 4 years fixed. Sentence was within statutory limits, and defendant provided no new information to show that it was excessive. State v. Shutz, 143 Idaho 200, 141 P.3d 1069 (2006).

Sentence Upheld.

Plea agreement required the prosecution to recommend a particular sentence, and provided that defendant could argue that the trial court impose a lesser sentence; although defendant argued that the prosecutor's vigorous argument was inconsistent with the relatively lenient recommendation of sentence, which defendant said disavowed the recommended sentences, the prosecutor made no allusion to a more severe recommendation contained in a presentence investigation report, nor to other factors which would have supported a more severe sentence. State v. Halbesleben, 147 Idaho 161, 206 P.3d 867 (Ct. App. 2009).

Sufficiency of Evidence.

Testimony from a detective and medical personnel, defendant's admissions and the periodic reoccurring visits to the hospital followed by a child's return to the exact same condition, coupled with the increasing severity and devastating effect of the child's injuries, when viewed in the light most favorable to the state, provided substantial evidence that defendant willfully permitted the child to be placed in a situation where his health was endangered and that defendant knew of the danger; accordingly, evidence supported defendant's conviction of felony injury to a child. State v. Morales, 146 Idaho 264, 192 P.3d 1088 (Ct. App. 2008).

Sufficiency of Indictment.

On appeal of conviction for injury to a child, defendant's argument that the charging document was jurisdictionally insufficient because it failed to expressly allege the element of willfulness was without merit, since the charging document explicitly stated he was being charged pursuant to the relevant statute. State v. Shutz, 143 Idaho 200, 141 P.3d 1069 (2006).

"Willfully Permit".

Although this statute does not create vicarious liability, an employer can be found liable for willfully permitting injury to a child even if the employer did not actually harm the child directly. Steed v. Grand Teton Council of the BSA, Inc., 144 Idaho 848, 172 P.3d 1123 (2007).

Cited in: State v. Aschinger, 149 Idaho 53, 232 P.3d 831 (Ct. App. 2009).

RESEARCH REFERENCES

A.L.R. — Parents' criminal liability for failure to provide medical attention to their children. 118 A.L.R.5th 253.

18-1502. Beer, wine or other alcohol age violations — Fines.

JUDICIAL DECISIONS

Analysis

Constitutionality.
Limiting the right to travel.

Constitutionality.

Punishment of persons 18 to 21 years of age for possession of alcohol, including suspension of driver's license, is not violative of either equal protection or due process rights, since the state has a legitimate interest in the prevention of underage drinking; suspension of a driver's license is a form of deterrence, and the fact that the suspension is applicable to adults between eighteen and twenty-one does not render it unconstitutional, since they are still subject to restrictions on drinking. State v. Bennett, 142 Idaho 166, 125 P.3d 522 (2005).

Limiting the Right to Travel.

Suspension or revocation of driving privileges not limit the right to travel, merely the means; suspension of driving privileges may make travel less convenient but there is no constitutional infringement. State v. Bennett, 142 Idaho 166, 125 P.3d 522 (2005).

18-1502C. Possession of marijuana or drug paraphernalia by a minor — Use of controlled substances — Fines. — (1) Any person under eighteen (18) years of age who shall have in his possession any marijuana as defined in section 37-2701(t), Idaho Code, which would constitute a misdemeanor for an adult so charged, or who shall have in his possession any drug paraphernalia as defined in section 37-2701(n), Idaho Code, or who shall unlawfully use or be under the influence of controlled substances in violation of the provisions of section 37-2732C, Idaho Code, shall be guilty of a misdemeanor, and upon conviction, may be punished by a fine not in excess of one thousand dollars ($1,000) or by ninety (90) days in a juvenile detention facility or by both or may be subject to the provisions of chapter 5, title 20, Idaho Code. If the juvenile is adjudicated under the provisions of chapter 5, title 20, Idaho Code, for a violation of this section he shall be sentenced in accordance with the provisions of chapter 5, title 20, Idaho Code. The juvenile shall be adjudicated under chapter 5, title 20, Idaho Code, for a violation of section 37-2732C, Idaho Code, unless the court finds that adjudication under chapter 5, title 20, Idaho Code, is not appropriate in the circumstances.

(2) A conviction under this section shall not be used as a factor or considered in any manner for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer, nor shall such conviction be grounds for nonrenewal of any insurance policy as provided in section 41-2507, Idaho Code.

(3) Any person who pleads guilty or is found guilty of possession of marijuana pursuant to this section, or any person under eighteen (18) years of age who pleads guilty or is found guilty of a violation of section 37-2732C,

Idaho Code, then in addition to the penalty provided in subsection (1) of this section:

(a) The court shall suspend the person's driving privileges for a period of not more than one (1) year. The person may request restricted driving privileges during the period of suspension, which the court may allow, if the person shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

(b) If the person's driving privileges have been previously suspended under this section, the court shall suspend the person's driving privileges for a period of not more than two (2) years. The person may request restricted driving privileges during the period of suspension, which the court may allow, if the person shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court.

(c) The person shall surrender his license or permit to the court.

(d) The court shall notify the motor vehicle division of the Idaho transportation department of all orders of suspension it issues pursuant to this section.

(4) The court, in its discretion, may also order the person convicted of possession of marijuana under subsection (1) of this section, or a person under eighteen (18) years of age who has been convicted of using or being under the influence of a controlled substance in violation of section 37-2732C, Idaho Code, to undergo and complete a substance abuse evaluation and to complete a drug treatment program, as provided in section 37-2738, Idaho Code.

History.

I.C., § 18-1502C, as added by 1994, ch. 414, § 1, p. 1302; am. 1995, ch. 361, § 1, p. 1264; am. 1996, ch. 261, § 2, p. 857; am. 1999, ch. 388, § 2, p. 1083; am. 2002, ch. 184, § 1, p. 535; am. 2003, ch. 285, § 2, p. 770; am. 2010, ch. 118, § 1, p. 256.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 118, updated the first section reference in subsection (1) in light of the 2010 amendment of § 37-2701.

JUDICIAL DECISIONS

Cited in: State v. Doe, — Idaho —, 305 P.3d 543 (Ct. App. 2013).

RESEARCH REFERENCES

A.L.R. — Construction and application of state drug paraphernalia acts. 23 A.L.R.6th 307.

18-1505. Abuse, exploitation or neglect of a vulnerable adult. — (1) Any person who abuses or neglects a vulnerable adult under circumstances likely to produce great bodily harm or death is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar ($25,000) fine.

(2) Any person who abuses or neglects a vulnerable adult under circum-

stances other than those likely to produce great bodily harm or death is guilty of a misdemeanor.

(3) Any person who exploits a vulnerable adult is guilty of a misdemeanor, unless the monetary damage from such exploitation exceeds one thousand dollars ($1,000), in which case the person is guilty of a felony punishable by imprisonment for not more than ten (10) years and not more than a twenty-five thousand dollar ($25,000) fine.

(4) As used in this section:

(a) "Abuse" means the intentional or negligent infliction of physical pain, injury or mental injury. Intentional abuse shall be punished under subsection (1) or (2) of this section depending upon the harm inflicted. Abuse by negligent infliction shall only be punished under subsection (2) of this section.

(b) "Caretaker" means any individual or institution that is responsible by relationship, contract or court order to provide food, shelter or clothing, medical or other life-sustaining necessities to a vulnerable adult.

(c) "Exploitation" or "exploit" means an action which may include, but is not limited to, the unjust or improper use of a vulnerable adult's financial power of attorney, funds, property or resources by another person for profit or advantage.

(d) "Neglect" means failure of a caretaker to provide food, clothing, shelter or medical care to a vulnerable adult, in such a manner as to jeopardize the life, health and safety of the vulnerable adult.

(e) "Vulnerable adult" means a person eighteen (18) years of age or older who is unable to protect himself from abuse, neglect or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.

(5) Nothing in this section shall be construed to mean a person is abused, neglected or exploited for the sole reason he is relying upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination; nor shall the provisions of this section be construed to require any medical care or treatment in contravention of the stated or implied objection of such a person.

(6) Nothing in this section shall be construed to mean that an employer or supervisor of a person who abuses, exploits or neglects a vulnerable adult may be prosecuted unless there is direct evidence of a violation of this statute by the employer or supervisor.

History.

I.C., § 18-1505, as added by 1994, ch. 136, § 3, p. 308; am. 2005, ch. 166, § 1, p. 506; am. 2008, ch. 209, § 1, p. 662; am. 2009, ch. 71, § 1, p. 206.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 209, in paragraph (4)(c), substituted "unjust or improper use" for "misuse" and inserted "financial power of attorney."

The 2009 amendment, by ch. 71, added

"funds, property or resources" at the end of subsection (4)(e).

18-1505A. Abandoning a vulnerable adult. — (1) Any person who abandons a vulnerable adult, as that term is defined in section 18-1505, Idaho Code, in deliberate disregard of the vulnerable adult's safety or welfare, regardless of whether the vulnerable adult suffered physical harm from the act of abandonment, shall be guilty of a felony and shall be imprisoned in the state prison for a period not in excess of five (5) years, or by a fine not exceeding five thousand dollars ($5,000), or by both such fine and imprisonment. It shall not be a defense to prosecution under the provisions of this section that the perpetrator lacked the financial ability or means to provide food, clothing, shelter or medical care reasonably necessary to sustain the life and health of a vulnerable adult.

(2) As used in this section "abandon" means the desertion or willful forsaking of a vulnerable adult by any individual, caretaker as defined by subsection (4)(b) of section 18-1505, Idaho Code, or entity which has assumed responsibility for the care of the vulnerable adult by contract, receipt of payment of care, any relationship arising from blood or marriage wherein the vulnerable adult has become the dependent of another or by order of a court of competent jurisdiction; provided that abandon shall not mean the termination of services to a vulnerable adult by a physician licensed under chapter 18, title 54, Idaho Code, or anyone under his direct supervision, where the physician determines, in the exercise of his professional judgment, that termination of such services is in the best interests of the patient.

History.
I.C., § 18-1505A, as added by 1993, ch. 179, § 1, p. 460; am. 1994, ch. 136, § 4, p. 308; am. 2005, ch. 166, § 2, p. 506.

18-1505B. Sexual abuse and exploitation of a vulnerable adult. — (1) It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex;

(b) Involve a vulnerable adult in any act of bestiality or sadomasochism as defined in section 18-1507, Idaho Code; or

(c) Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in paragraph (a) of this subsection.

(2) For the purposes of this section:

(a) "Commercial purpose" means the intention, objective, anticipation or expectation of monetary gain or other material consideration, compensation, remuneration or profit.

(b) "Sexual contact" means any physical contact between a vulnerable

adult and any person or between vulnerable adults, which is caused by the actor, or the actor causing the vulnerable adult to have self-contact;

(c) "Sexually exploitative material" means any image, photograph, motion picture, video, print, negative, slide or other mechanically, electronically, digitally or chemically produced or reproduced visual material that shows a vulnerable adult engaged in, participating in, observing or being used for explicit sexual conduct, or showing a vulnerable adult engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling; and

(d) "Vulnerable adult" is as defined in section 18-1505, Idaho Code.

(3) Sexual abuse of a vulnerable adult is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed twenty-five (25) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.

(4) It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, he knowingly:

(a) Causes, induces or permits a vulnerable adult to engage in or be used in any explicit sexual conduct as defined in section 18-1507, Idaho Code; or

(b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses or distributes sexually exploitative material.

(5) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.

(6) Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed fifteen (15) years or by a fine not to exceed twenty-five thousand dollars ($25,000), or by both such fine and imprisonment.

History.

I.C., § 18-1505B, as added by 2005, ch. 216, § 1, p. 689; am. 2009, ch. 100, § 1, p. 309; am. 2012, ch. 269, § 1, p. 751.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 100, added subsection (1)(b) and redesignated former subsection (1)(b) as subsection (1)(c); and in subsection (4)(b), deleted "as defined in section 18-1507, Idaho Code, depicting a vulnerable adult engaged in, observing, or being used for explicit sexual conduct" from the end.

The 2012 amendment, by ch. 269, in subsection (2), added paragraph (a), redesignating the subsequent paragraphs, and rewrote paragraph (c), by inserting "image" and substituting "video" for "videotape," "electronically digitally or chemically produced or reproduced visual material that shows" for "electronically or chemically reproduced visual material that depicts," and the language beginning "or showing a vulnerable adult" for "as defined in section 18-1507, Idaho Code"; and deleted "as defined in section 18-1507, Idaho Code" following "commercial purpose" in subsection (4).

18-1506. Sexual abuse of a child under the age of sixteen years. — (1) It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

(a) Solicit a minor child under the age of sixteen (16) years to participate in a sexual act;

(b) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in section 18-1508, Idaho Code;

(c) Make any photographic or electronic recording of such minor child; or

(d) Induce, cause or permit a minor child to witness an act of sexual conduct.

(2) For the purposes of this section "solicit" means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purposes of this section "sexual contact" means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.

(4) For the purposes of this section "sexual conduct" means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(5) Any person guilty of a violation of the provisions of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

History.

I.C., § 18-1506, as added by 1982, ch. 192, § 1, p. 519; am. 1984, ch. 63, § 1, p. 112; am. 1987, ch. 178, § 1, p. 354; am. 1988, ch. 329, § 1, p. 991; am. 1992, ch. 145, § 1, p. 438; am. 2006, ch. 178, § 3, p. 545; am. 2008, ch. 240, § 1, p. 721.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 178, substituted "twenty-five (25) years" for "fifteen (15) years" in subsection (4).

The 2008 amendment, by ch. 240, added paragraph (1)(d) and subsection (4) and redesignated former subsection (4) as subsection (5).

Effective Dates.

Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

JUDICIAL DECISIONS

Analysis

Double jeopardy.
Elements.
Evidence.
Included offenses.
Jury instructions.
Other offense.
Sentence.
Solicitation.
Sufficiency of information.

Double Jeopardy.

Defendant was not subjected to double jeopardy by being indicted and convicted of both having sexual contact with a minor and solic-

iting sexual contact with a minor, since the two counts contemplated proof of completely different elements, touching and solicitation. State v. Hussain, 143 Idaho 175, 139 P.3d 777 (Ct. App. 2006).

Elements.

The material elements for a conviction under Subsection (1)(b) are: 1. a defendant over the age of eighteen, 2. acting to gratify the lust or sexual desire of himself, the child or a third person, and 3. having sexual contact, not amounting to lewd conduct, with a minor. It is not a requirement that the state prove, beyond a reasonable doubt, the exact date of the sexual abuse. State v. Marsh, 141 Idaho 862, 119 P.3d 637 (Ct. App. 2004).

Evidence.

Evidence was sufficient to sustain a conviction for sexual abuse of a minor under sixteen years of age where defendant masturbated under a blanket in the child's view and asked her to get him a tissue that he later explained to her was for his ejaculate. Defendant asked the victim to lift up the blanket on his lap and, when she did, he displayed his erect penis to her; he then reached towards her chest area, asking her to lift her shirt. State v. Harvey, 142 Idaho 527, 129 P.3d 1276 (Ct. App. 2006).

Included Offenses.

Defendant's conviction for sexual abuse of a child under 16 years of age, in violation paragraph (1)(b), was void, because the offense was not a lesser-included offense of the originally-charged lewd conduct with a child under 16 years of age; hence, defendant could only be validly charged by resubmitting the case to a grand jury and having it return an amended indictment. State v. Flegel, 151 Idaho 525, 261 P.3d 519 (2011).

Jury Instructions.

Variance between an information charging sexual abuse of a child under 16 and a jury instruction on the crime's elements, when the instruction did not state the specific act of sexual abuse alleged in the information, was not fatal because the variance (1) did not leave defendant open to the risk of double jeopardy, or (2) deny defendant fair notice in preparing his defense, since defendant claimed he did no criminal act. State v. Ormesher, 154 Idaho 221, 296 P.3d 427 (Ct. App. 2012).

Other Offense.

The crime of sexual abuse of a child under 16 years of age is not a lesser-included offense of the crime of lewd conduct with a child under 16 years of age. State v. Flegel, 151 Idaho 525, 261 P.3d 519 (2011).

Sentence.

Where defendant entered an *Alford* plea to sexual abuse of a child under sixteen, the district court ordered a concurrent unified sentence of fifteen years, with a minimum period of confinement of ten years, for sexual abuse of a child under sixteen. The district court did not abuse its discretion by denying his motion for a reduction of sentence. State v. Hillman, 143 Idaho 295, 141 P.3d 1164 (Ct. App. 2006).

In a case involving sexual abuse of a child, a seven-year sentence was not excessive, despite evidence of defendant's military record, his good character, his drinking problem, and the fact that it was his first felony, because defendant knew what he was doing when he broke into a home, crawled in bed with a 13-year-old girl, and had inappropriate sexual contact with her. State v. Bolen, 143 Idaho 437, 146 P.3d 703 (Ct. App. 2006).

Because the pictures of the 10-year-old victim were clearly pornographic and they documented defendant's physical molestation of the victim, a term of imprisonment of 20 years with five years fixed for sexual abuse under § 18-1506 did not constitute an abuse of discretion. State v. Overline, 154 Idaho 214, 296 P.3d 420 (Ct. App. 2012).

Solicitation.

Defense counsel was ineffective for failing to assert that the evidence was insufficient to support appellant's convictions for sexual abuse of a minor, where the evidence showed that appellant expressed to the victim a desire only for the victim to take photographs while appellant engaged in a sexual act. The victim did not testify that appellant conveyed any desire that the victim touch himself or touch appellant, nor was there any testimony that appellant made any physical advances or gestures toward the victim that would constitute solicitation under the terms of the statute. Mintun v. State, 144 Idaho 656, 168 P.3d 40 (Ct. App. 2007) (But see 2008 amendment).

Sufficiency of Information.

Trial court lacked jurisdiction, where the indictment alleged acts that were made criminal by paragraph (1)(d) of this section, which was enacted in 2008, but the alleged acts occurred in 2001 and 2002. State v. Olin, 153 Idaho 891, 292 P.3d 282 (Ct. App. 2012).

Cited in: State v. Glass, 146 Idaho 77, 190 P.3d 896 (Ct. App. 2008); State v. Rossignol, 147 Idaho 818, 215 P.3d 538 (Ct. App. 2009); State v. Truman, 150 Idaho 714, 249 P.3d 1169 (Ct. App. 2010).

18-1506A. Ritualized abuse of a child — Exclusions — Penalties — Definition. — (1) A person is guilty of a felony when he commits any of

the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(a) Actually or in simulation, tortures, mutilates or sacrifices any warm-blooded animal or human being;

(b) Forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(c) Forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(d) Involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(e) Places a living child into a coffin or open grave containing a human corpse or remains;

(f) Threatens death or serious harm to a child, his parents, family, pets or friends which instills a well-founded fear in the child that the threat will be carried out; or

(g) Unlawfully dissects, mutilates, or incinerates a human corpse.

(2) The provisions of this section shall not be construed to apply to:

(a) Lawful agricultural, animal husbandry, food preparation or wild game hunting and fishing practices and specifically the branding or identification of livestock;

(b) The lawful medical practice of circumcision or any ceremony related thereto; or

(c) Any state or federally approved, licensed or funded research project.

(3) Any person convicted of a violation of this section shall be imprisoned in the state prison for a term of not more than life.

(4) For the purposes of this section, "child" means any person under eighteen (18) years of age.

History.

I.C., § 18-1506A, as added by 1990, ch. 210, § 1, p. 467; am. 2006, ch. 178, § 4, p. 545.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 178, rewrote subsection (3), which formerly read: "The penalty upon conviction of a first offense shall be imprisonment in the state prison for a term of not to exceed fifteen (15) years. Upon conviction of a second or subsequent offense, the penalty shall be for a term not more than life imprisonment."

Effective Dates.

Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

18-1507. Definitions — Sexual exploitation of a child — Penalties. — (1) As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

(c) "Erotic fondling" means touching a person's clothed or unclothed

genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or

(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any image, photograph, motion picture, video, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.

(2) A person commits sexual exploitation of a child if he knowingly and willfully:

(a) Possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; or

(b) Causes, induces or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material; or

(c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits or advertises any sexually exploitative material; or

(d) Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

(3) The sexual exploitation of a child pursuant to subsection (2)(a) of this section is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed ten (10) years or by a fine not to exceed ten thousand dollars ($10,000), or by both such imprisonment and fine.

(4) The sexual exploitation of a child pursuant to subsections (2)(b), (c) and (d) of this section is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars ($50,000) or by both such fine and imprisonment.

(5) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

History.

I.C., § 18-1507, as added by 1983, ch. 256, § 1, p. 678; am. 1987, ch. 177, § 1, p. 352; am. 1992, ch. 145, § 2, p. 438; am. 2006, ch. 178, § 5, p. 545; am. 2012, ch. 269, § 2, p. 751.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 178, substituted "term not to exceed thirty (30) years" for "period not to exceed fifteen (15) years" and "fifty thousand dollars ($50,000)" for "twenty-five thousand dollars ($25,000)" in subsection (5).

The 2012 amendment, by ch. 269, rewrote the section to the extent that a detailed comparison is impracticable, adding "Definitions" and "Penalties" to the section heading, deleting the definition of "commercial purpose" and adding present subsection (3).

Effective Dates.

Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Interest.

Constitutionality.

Trial court did not err in dismissing defendant's challenge to former § 18-1507A and this section, criminalizing possession of sexually exploitative material for other than commercial purpose, as not being unconstitutionally overbroad as they sufficiently narrowed the scope of prohibition; they limited its reach to works that visually depicted sexual conduct by children below a certain age and they suitably limited the category of "sexual conduct" proscribed. State v. Morton, 140 Idaho 235, 91 P.3d 1139 (2004).

Paragraph (2)(e)'s [now (1)(d)] proscription

is not so broad as to outlaw all depictions of minors in a state of nudity, but rather only those depictions that constitute child pornography, moreover, to the extent such constitutionally protected works may come within the reach of the statute, it is seriously doubtful that these arguably impermissible applications of the statute will amount to more than a tiny fraction of the materials within the statute's reach. Finally, § 18-1507A(2) [now repealed] contains an element of scienter because, to be guilty of such possession, the possessor must do so "knowingly and willfully." State v. Morton, 140 Idaho 235, 91 P.3d 1139 (2004).

Interest.

Where defendant entered an *Alford* plea to lewd conduct with a minor under sixteen, and, as part of his sentence, was required to pay a $5,000 fine, the fine imposed on defendant was subject to accrual of interest until paid in full. State v. Hillman, 143 Idaho 295, 141 P.3d 1164 (Ct. App. 2006).

RESEARCH REFERENCES

A.L.R. — Construction and application of U.S. Sentencing Guideline § 2G1.3(b)(3), Providing two-level enhancement for use of computer to persuade, induce, entice, coerce, or facilitate the travel of, minor to engage in prohibited sexual conduct. 58 A.L.R. Fed. 2d 1.

18-1507A. Possession of sexually exploitative material for other than a commercial purpose — Penalty. [Repealed.]

Repealed by S.L. 2012, ch. 269, § 3, effective July 1, 2012.

History.

I.C., § 18-1507A, as added by 1987, ch. 177, § 2, p. 352; am. 2006, ch. 178, § 6, p. 545.

JUDICIAL DECISIONS

Sentence.

Because the pictures of the 10-year-old victim were clearly pornographic and they documented defendant's physical molestation of the victim, a term of imprisonment of 10 years with five years fixed for possession of sexually exploitative material under former § 18-1507A did not constitute an abuse of discretion. State v. Overline, 154 Idaho 214, 296 P.3d 420 (Ct. App. 2012).

18-1508. Lewd conduct with minor child under sixteen.

JUDICIAL DECISIONS

ANALYSIS

Double jeopardy.
Evidence.
—Child's statement.
—Expert testimony.
—Other acts.
Included offenses.
Information.
Instruction.
Prior misconduct.
Prosecutor comments.
Sentence.
Variance.

Double Jeopardy.

Defendant failed to show that a lack of greater specificity in the dates of lewd acts in an information somehow inhibited his ability to defend against the charges of lewd conduct with a minor child under 16, or subjected him to the risk of another prosecution for the same offenses where the state could not have

pleaded the charges with any greater particularity; the victim was young, between 8 and 10 years old, at the time these lewd acts were alleged to have been committed, she frequently visited defendant, her grandfather, at his home, where the abuse was alleged to have occurred and it was unrealistic to have expected her to have been able to have recalled dates specifically given her age and the time span over which the acts were alleged to have occurred. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

Evidence.

Defendant was found guilty under this section of engaging in improper touching of a minor child while providing therapeutic massage services to her; testimony of other massage clients who had similar experiences with the defendant was properly admitted as showing common scheme or intent and lack of accidental touching. State v. Parmer, 147 Idaho 210, 207 P.3d 186 (Ct. App. 2009).

In a trial for lewd conduct with a six-year-old child, defense witnesses should have been permitted to testify that in their opinions, based on their observations of defendant's interactions with children, he was trustworthy with preteen children. However, the error in excluding the evidence was harmless. State v. Rothwell, 154 Idaho 125, 294 P.3d 1137 (Ct. App. 2013).

Defendant's right to present a defense can be limited by IRE 412. Admission of evidence of the alleged victim's past sexual behavior is constitutionally required only in extraordinary circumstances; courts have wide discretion under the Confrontation Clause to impose reasonable limits on cross-examination and introduction of evidence based on concerns about harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant. State v. Ozuna, — Idaho —, 316 P.3d 109 (Ct. App. 2013).

—Child's Statement.

Videotaped statements a child victim made during an interview at a sexual trauma abuse response center at the direction of detectives were testimonial, and, therefore, the admission of the videotape violated defendant's rights under the Confrontation Clause. The primary purpose of the interview was to establish or prove past events potentially relevant to later criminal prosecution as opposed to meeting the child's medical needs, as: (1) the nurse did not ask any questions regarding the victim's medical condition; (2) the interview took place separately from the medical assessment; and (3) the parties clearly anticipated that the videotaped statements would provide a substitute for the victim's live testimony in court. State v. Hooper, 145 Idaho 139, 176 P.3d 911 (2007).

—Expert Testimony.

Where defendant was convicted of lewd contact with a six-year-old girl, the testimony from a DNA expert who indicated that defendant's DNA was in the semen found on the girl's underwear and inside a condom was inadmissible; the expert was not at the lab to receive the evidence and did not perform the DNA testing herself. She relied on oral communications with her colleague and his notes in forming her conclusions about the DNA evidence, which was inadmissible hearsay under Idaho. R. Evid. 801. State v. Watkins, 148 Idaho 418, 224 P.3d 485 (2009).

—Other Acts.

Where defendant argued that the state's Idaho R. Evid. 404(b) notice did not adequately describe the incidents about which testimony would be given, the appellate court held that the notice was sufficient to alert the defense to the general nature of the additional testimony and to thereby avoid surprise; the witnesses were identified in the notice, and the general type of conduct alleged to have been committed was revealed also. That information was sufficient to allow the admissibility issue to have been raised by defendant although the trial court elected not to rule on admissibility before the trial. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

Victim's testimony that defendant tried to molest the victim's younger brother was admissible to explain why the victim decided to tell his mother about the abuse that he had received, and went to the victim's credibility; as limited by the court's instructions, the testimony was not improperly introduced as evidence of the defendant's character. State v. Diggs, 141 Idaho 303, 108 P.3d 1003 (Ct. App. 2005).

In a lewd conduct with a minor under 16 case, the evidence of defendant's behavior towards the victim, including his first sexual comments towards her when she was 12 years old, showing her pornography, the use of rewards and punishments depending on whether she gave in to his sexual demands, as well as the sexual acts the two engaged in, was admissible evidence under subsection (b) to establish defendant's continuing criminal design to cultivate a relationship with the victim, such that she would concede to his sexual demands. State v. Truman, 150 Idaho 714, 249 P.3d 1169 (Ct. App. 2010).

Included Offenses.

The crime of sexual abuse of a child under 16 years of age is not a lesser-included offense of the crime of lewd conduct with a child under 16 years of age. State v. Flegel, 151 Idaho 525, 261 P.3d 519 (2011).

Information.

Time was not a material element to the crime of lewd and lascivious conduct with a

minor, and where the only allegation that defendant in his motion for a judgment of acquittal under Idaho Crim. R. 29(a) was that the state failed to prove beyond a reasonable doubt was the time at which the offense occurred, the district court's denial of the motion was affirmed. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

Allegations of an information, of lewd conduct with a minor child under 16, though general, were sufficient where defendant was fully apprised of the acts he was charged with committing at the preliminary hearing where the state presented the victims' testimony about the surrounding circumstances and the manner in which the offenses were alleged to have been committed. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

In charging defendant of lewd conduct with a minor child under sixteen, a violation of this section, counts I and II using identical language, the state was not charging defendant twice for one single act, nor were they charging him for a continuous course of conduct; rather, the state was charging defendant for two separate and distinct acts that occurred in the same manner and during the same span of time where the victim testified to two incidents of manual-genital touching that occurred within that time period. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

Defendant's conviction for sexual abuse of a child under 16 years of age, in violation § 18-1506(1)(b), was void, because the offense was not a lesser-included offense of the originally-charged lewd conduct with a child under 16 years of age; hence, defendant could only be validly charged by resubmitting the case to a grand jury and having it return an amended indictment. State v. Flegel, 151 Idaho 525, 261 P.3d 519 (2011).

Instruction.

In defendant's trial for lewd conduct with a minor child under 16, he contended that the district court erred in refusing his proposed instruction on credibility, which was based on the pattern credibility instruction in the Idaho Civil Jury Instructions (IDJI), because the Idaho Criminal Jury Instructions (ICJI), which was the instruction used by the court, gave the jury insufficient guidance for the determination of witness credibility and that discrimination was violative of his right to equal protection; the appellate court held that that claim was without merit because although the IDJI credibility instruction is longer and more detailed than the ICJI instruction, in substance the two are alike. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

Prior Misconduct.

Defendant's conviction for lewd conduct with a minor under 16 and intimidating a witness was upheld because evidence of prior charges was properly admitted since testimony regarding those past acts was relevant because defendant committed sexual abuse in a similar manner, against similarly situated victims on multiple occasions, and the testimony was admissible for corroboration purposes; the exclusion of evidence concerning the ultimate disposition of the prior charges was appropriate because the evidence was not relevant. State v. Kremer, 144 Idaho 286, 160 P.3d 443 (Ct. App. 2007).

Prosecutor Comments.

In prosecution for lewd conduct with a minor child, even though the prosecutor's statements referencing defendant's role as a prospective witness should not have been made in front of the jury, once defendant took the stand, the effect of those comments made by the prosecutor became so diluted that they could not have reasonably contributed to the verdict rendered by the jury. State v. Morgan, 144 Idaho 861, 172 P.3d 1136 (Ct. App. 2007), review denied, 2007 Ida. LEXIS 225 (Dec. 7, 2007).

Sentence.

District court did not abuse its discretion in sentencing defendant to concurrent unified terms of life imprisonment, with five years determinate, for committing lewd conduct with a minor child under 16; although it was defendant's first felony conviction, there was evidence that the abuse of his granddaughters occurred over a number of years and, according to a psychosexual evaluation, defendant presented a high risk of reoffending. State v. Jones, 140 Idaho 41, 89 P.3d 881 (Ct. App. 2003).

In the sentencing hearing following defendant's plea to the charge of sexual battery, the prosecutor violated the plea agreement by recommending a harsher sentence; therefore, the sentence of 15 years imposed was vacated. State v. Daubs, 140 Idaho 299, 92 P.3d 549 (Ct. App. 2004).

Trial court did not abuse its discretion by denying defendant's motion to reduce his sentence following his guilty plea to one count of lewd conduct with a minor under sixteen. Defendant had had sex with the victim 35 to 40 times beginning when she was 13, had violated probation for two former felonies, had made excuses for his actions, and was a moderate to high risk to reoffend. State v. Knighton, 143 Idaho 318, 144 P.3d 23 (2006).

Where defendant entered an *Alford* plea to lewd conduct with a minor under sixteen, the district court sentenced him to a unified life sentence, with a minimum period of confinement of ten years and defendant was required to pay a $5,000 fine. The district court did not abuse its discretion by denying his motion for

a reduction of sentence. State v. Hillman, 143 Idaho 295, 141 P.3d 1164 (Ct. App. 2006).

Sentence imposed by the district court was reasonable in light of the surrounding circumstances of the crime: defendant repeatedly abused a young and innocent victim who suffered harm as a result; he accused the vicim of lying because she disliked him; defendant continued to be a threat to public safety due to his refusal to admit to the abuse; the court felt it necessary to protect the community from the possibility that the defendant may reoffend. State v. Felder, 150 Idaho 269, 245 P.3d 1021 (Ct. App. 2010).

It was not an abuse of discretion for the trial court to deny probation where defendant pled guilty to lewd physical contact with his seven-year-old stepdaughter, in violation of this section, in exchange for which two other charges of lewd conduct were dismissed State v. Hurst, 151 Idaho 430, 258 P.3d 950 (Ct. App. 2011).

Because the pictures of the 10-year-old victim were clearly pornographic and they documented defendant's physical molestation of the victim, a term of imprisonment of 20 years with five years fixed for lewd conduct under § 18-1508 did not constitute an abuse of discretion. State v. Overline, 154 Idaho 214, 296 P.3d 420 (Ct. App. 2012).

Where defendant was convicted of lewd conduct with a minor child under sixteen, his unified life sentence, with a minimum term of confinement of twenty years, enhanced for having been previously convicted of a sexual offense, was not unreasonable or excessive. He posed a very significant and substantial danger to other members of society, and minor females in particular. State v. Ozuna, — Idaho —, 316 P.3d 109 (Ct. App. 2013).

Variance.

Defendant's convictions for three counts of lewd conduct with a minor child under 16 in violation of this section was proper where the combination of the three acts of lewd conduct into a single element instruction did not mislead the jury or prejudice defendant; further, the court concluded that, based on the legal defense presented at trial, it could unequivocally determine that the jury would not have disagreed as to the commission of any of the acts, thus, the jury would still have found defendant guilty of each count of lewd conduct and, therefore, the variance error was harmless, Idaho. Crim. R. 52. State v. Montoya, 140 Idaho 160, 90 P.3d 910 (Ct. App. 2004).

In response to jury questions about their instructions on a charge of oral-genital contact with a child, the trial court erred by listing to the jury a variety of lewd and lascivious contacts the defendant was not charged with, and by adding "etc." to the end of that list. Instructions to a jury must match the allegation in the charging document, otherwise the defendant can be convicted of conduct he is not charged with. State v. Folk, 151 Idaho 327, 256 P.3d 735 (2011).

Where defendant was charged with lewd conduct based on manual genital contact, there was a fatal variance because the jury was instructed that defendant could be found guilty for "any other lewd or lascivious act," after hearing testimony that defendant touched the victim's breast area, an act that did not constitute the crime of lewd conduct. The court declined to speculate that it was defense strategy to not object, allowing defendant to be found guilty of conduct that did not constitute the crime. State v. Day, 154 Idaho 476, 299 P.3d 788 (Ct. App. 2013).

Cited in: State v. Stover, 140 Idaho 927, 104 P.3d 969 (2005); State v. Veloquio, 141 Idaho 154, 106 P.3d 480 (Ct. App. 2005); State v. Glass, 146 Idaho 77, 190 P.3d 896 (Ct. App. 2008); State v. Crockett, 146 Idaho 13, 189 P.3d 475 (Ct. App. 2008); State v. Rossignol, 147 Idaho 818, 215 P.3d 538 (Ct. App. 2009); State v. Aschinger, 149 Idaho 53, 232 P.3d 831 (Ct. App. 2009); Hooper v. State, 150 Idaho 497, 248 P.3d 748 (2011); State v. Aguilar, 154 Idaho 201, 296 P.3d 407 (Ct. App. 2012).

RESEARCH REFERENCES

A.L.R. — Validity of state and municipal indecent exposure statutes and ordinances. 71 A.L.R.6th 283.

18-1508A. Sexual battery of a minor child sixteen or seventeen years of age — Penalty. — (1) It is a felony for any person at least five (5) years of age older than a minor child who is sixteen (16) or seventeen (17) years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or any member thereof of such minor child including, but not limited

to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of explicit sexual conduct as defined in section 18-1507, Idaho Code; or

(b) Solicit such minor child to participate in a sexual act; or

(c) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in paragraph (a) of this subsection; or

(d) Make any photographic or electronic recording of such minor child.

(2) For the purpose of subsection (b) of this section, "solicit" means any written, verbal or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purpose of this section, "sexual contact" means any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have self contact.

(4) Any person guilty of a violation of the provisions of subsection (1)(a) of this section shall be imprisoned in the state prison for a period not to exceed life.

(5) Any person guilty of a violation of the provisions of subsections (1)(b), (1)(c), or (1)(d) of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

History.

I.C., § 18-1508A, as added by 1992, ch. 249, § 1, p. 733; am. 2006, ch. 178, § 7, p. 545.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 178, substituted "twenty-five (25) years" for "fifteen (15) years" in subsection (5).

Effective Dates.

Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

JUDICIAL DECISIONS

Sentence.

Defendant's *Alford* plea to charges under this section reflected his lack of acceptance of responsibility for his actions and indicated that he was unsuitable for rehabilitation at the time of sentencing. State v. Baker, 153 Idaho 692, 290 P.3d 1284 (Ct. App. 2012).

18-1509. Enticing of children.

JUDICIAL DECISIONS

Construction.

The language "with the intent that the child shall be concealed from public view" in paragraph (1)(c) does not also modify subsections (1)(a) and (b). State v. Harrison, 147 Idaho 678, 214 P.3d 664 (Ct. App. 2009).

RESEARCH REFERENCES

A.L.R. — Construction and application of U.S. Sentencing Guideline § 2G1.3(b)(3), Providing two-level enhancement for use of computer to persuade, induce, entice, coerce, or facilitate the travel of, minor to engage in prohibited sexual conduct. 58 A.L.R. Fed. 2d 1.

18-1509A. Enticing a child through use of the internet or other communication device — Penalties — Jurisdiction. — (1) A person aged eighteen (18) years or older shall be guilty of a felony if such person knowingly uses the internet or any device that provides transmission of messages, signals, facsimiles, video images or other communication to solicit, seduce, lure, persuade or entice by words or actions, or both, a person under the age of sixteen (16) years or a person the defendant believes to be under the age of sixteen (16) years to engage in any sexual act with or against the person where such act would be a violation of chapter 15, 61 or 66, title 18, Idaho Code.

(2) Any person who is convicted of a violation of this section shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years.

(3) It shall not constitute a defense against any charge or violation of this section that a law enforcement officer, peace officer, or other person working at the direction of law enforcement was involved in the detection or investigation of a violation of this section.

(4) In a prosecution under this section, it is not necessary for the prosecution to show that an act described in chapter 15, 61 or 66, title 18, Idaho Code, actually occurred.

(5) The offense is committed in the state of Idaho for purposes of determining jurisdiction if the transmission that constitutes the offense either originates in or is received in the state of Idaho.

History.

I.C., § 18-1509A, as added by 2003, ch. 145, § 1, p. 418; am. 2012, ch. 270, § 1, p. 764.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 270, substituted "Enticing a child through use of the internet or other communication device" for "Enticing children over the internet" in the section heading; in subsection (1), inserted "or any device that provides transmission of messages, signals, facsimiles, video images or other communication" and substituted "person" for "child" or related language; added present subsection (4), redesignating former subsection (4) as present subsection (5); and made stylistic changes.

JUDICIAL DECISIONS

Analysis

Construction.
Context.
Law enforcement officer.

Construction.

Although defendant stopped short of attempting to set up an actual meeting with his victim, he engaged in actions in violation of this section when, over a period of about five months, he participated in sexually explicit online chats with someone he believed to be a 15-year-old girl. State v. Reed, 154 Idaho 120, 294 P.3d 1132 (Ct. App. 2012).

Context.

While defendant's online proposition to masturbate in front of a minor was not alone sufficient to warrant conviction under the enticement statute, there was sufficient evidence from which a jury could find that he was also soliciting further acts; context of the discussion made it evident that the proposed masturbation was but a step in the process of luring or seducing minor to direct sexual contact and, by showing up at the apartment the defendant had taken a substantial step toward this end. State v. Glass, 146 Idaho 77, 190 P.3d 896 (Ct. App. 2008).

Law Enforcement Officer.

Where defendant spent about five months engaging in sexually explicit online chat with someone he believed to be a 15-year-old girl, he was guilty under this section, even though the person which whom he was chatting was a middle-aged male police officer. State v. Reed, 154 Idaho 120, 294 P.3d 1132 (Ct. App. 2012).

Cited in: State v. Hanington, 148 Idaho 26, 218 P.3d 5 (Ct. App. 2009).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes prohibiting child luring as applied to cases involving luring of child by means of electronic communications. 33 A.L.R.6th 373.

Validity, construction, and application of state statutes prohibiting child luring as applied to cases involving luring of child by means of verbal or other nonelectronic communications. 35 A.L.R.6th 361.

Construction and application of U.S. Sentencing Guideline § 2G1.3(b)(3), Providing two-level enhancement for use of computer to persuade, induce, entice, coerce, or facilitate the travel of, minor to engage in prohibited sexual conduct. 58 A.L.R. Fed. 2d 1.

CHAPTER 16

COMPOUNDING CRIMES

SECTION.

18-1601. Compounding felony or misdemeanor.

18-1601. Compounding felony or misdemeanor. — Every person who, having knowledge of the actual commission of a crime, takes money or property of another, or any gratuity or reward, or any engagement, or promise thereof, upon any agreement or understanding to compound or conceal, such crime, or to abstain from any prosecution thereof, or to withhold any evidence thereof, except in the cases provided for by law, in which crimes may be compromised by leave of court, is punishable as follows:

(1) By imprisonment in the state prison not exceeding five (5) years, or in a county jail not exceeding one (1) year, where the crime was punishable by death or imprisonment in the state prison for life.

(2) By imprisonment in the state prison not exceeding three (3) years, or in the county jail not exceeding six (6) months where the crime was punishable by imprisonment in the state prison for any other term than for life.

(3) By imprisonment in the county jail not exceeding six (6) months, or by fine not exceeding one thousand dollars ($1,000), where the crime was a misdemeanor.

History.
I.C., § 18-1601, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 1, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$500" in subsection (3).

JUDICIAL DECISIONS

Cited in: State v. Piro, 141 Idaho 543, 112 P.3d 831 (Ct. App. 2005).

CHAPTER 17

CONSPIRACIES

18-1701. Criminal conspiracy defined.

JUDICIAL DECISIONS

ANALYSIS

Agreement.
Evidence.
Heroin.
Intent.

Agreement.
Agreement that is the foundation of a conspiracy charge need not be formal or express, and the evidence of the agreement need not be direct; rather, the agreement may be inferred from the circumstances and proven by circumstantial evidence. State v. Lopez, 140 Idaho 197, 90 P.3d 1279 (Ct. App. 2004); State v. Tankovich, — Idaho —, 307 P.3d 1247 (Ct. App. 2013).

Evidence.
Evidence was sufficient to sustain defendant's conviction for conspiracy to manufacture methamphetamine where evidence of the co-conspirator's close association with defendant, her acts of going store to store in defendant's vehicle to purchase items associated with the manufacture of methamphetamine, and the discovery of many of those items in defendant's home, coupled with the two-stage liquid and numerous other indicia of manufacturing, were more than sufficient to infer a conspiratorial intent and agreement. State v. Averett, 142 Idaho 879, 136 P.3d 350 (Ct. App. 2006).

Heroin.
Where defendant and this brother delivered 30 balloons of heroin per day to a state's witness, the evidence was sufficient to show that defendant was guilty of conspiracy to traffic in at least 28 grams of heroin, and he was properly sentenced to a unified term of life imprisonment with 15 years determinate. State v. Lopez, 140 Idaho 197, 90 P.3d 1279 (Ct. App. 2004).

Intent.
Conspiracy is a specific intent crime that requires the intent to agree or conspire and the intent to commit the offense which is the object of the conspiracy. State v. Rolon, 146 Idaho 684, 201 P.3d 657 (Ct. App. 2008); State v. Tankovich, — Idaho —, 307 P.3d 1247 (Ct. App. 2013).

Cited in: State v. Nevarez, 142 Idaho 616, 130 P.3d 1154 (Ct. App. 2005); State v. Warburton, 145 Idaho 760, 185 P.3d 272 (2008).

CHAPTER 19

CORPORATIONS

SECTION.
18-1905. Falsification of corporate books.

18-1905. Falsification of corporate books. — Every director, officer or agent of any corporation or joint stock association who knowingly receives or possesses himself of any property of such corporation or association otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making, any false entries, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the state prison not less than three (3) nor more than ten (10) years, or by imprisonment in a county jail not exceeding one (1) year or a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

History.
I.C., § 18-1905, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 2, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$500" near the end of the section.

CHAPTER 20

CRIMINAL SOLICITATION

18-2001. Definition of solicitation.

JUDICIAL DECISIONS

Cited in: State v. Grazian, 144 Idaho 510, 164 P.3d 790 (2007).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of 18 U.S.C.A. § 373, proscribing solicitation to commit crime of violence. 49 A.L.R. Fed 2d 333.

18-2002. Innocence or incapacity of person solicited — No defense.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of 18 U.S.C.A. § 373, proscribing solicitation to commit crime of violence. 49 A.L.R. Fed 2d 333.

18-2003. Renunciation of criminal purpose.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of 18 U.S.C.A. § 373, proscribing solicitation to commit crime of violence. 49 A.L.R. Fed 2d 333.

18-2004. Punishment for criminal solicitation.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of 18 U.S.C.A. § 373, proscribing solicitation to commit crime of violence. 49 A.L.R. Fed 2d 333.

CHAPTER 23

ELECTIONS

SECTION.
18-2308. Attempt of officer to ascertain vote.
18-2317. Destroying or defacing supplies.
18-2318. Electioneering at polls.
18-2322. Illegal registration by voter.

18-2308. Attempt of officer to ascertain vote. — Every officer, judge, or clerk of an election, who, previous to putting the ballot of an elector in the ballot box, attempts to find out any name on such ballot, or who opens, or suffers the folded ballot of any elector that has been handed in, to be opened or examined previous to putting the same into the ballot box, or who makes, or places any mark or device on any folded ballot, with a view to ascertain the name of any person for whom the elector has voted, or who, without the consent of the elector, discloses the name of any person which such officer, judge, or clerk has fraudulently or illegally discovered to have been voted for by such elector, is punishable by fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000).

History.
I.C., § 18-2308, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 3, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "fifty dollars ($50.00) nor more than one thousand dollars ($1,000)" for "fifty dollars nor more than $500."

18-2317. Destroying or defacing supplies. — No person shall, during the election, remove or destroy any of the supplies or conveniences placed in

the booths or compartments for the purpose of enabling the voter to prepare his ballot, or prior to, or on the day of election, willfully deface or destroy any list of candidates posted in accordance with the provisions of title 34, Idaho Code, concerning elections. No person shall, during an election, tear down or deface the cards printed for the instruction of voters. Every person willfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be fined in any sum not exceeding one thousand dollars ($1,000).

History.
I.C., § 18-2317, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 4, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$100.00" at the end of the last sentence.

18-2318. Electioneering at polls. — (1) On the day of any primary, general or special election, no person may, within a polling place, or any building in which an election is being held, or within one hundred (100) feet thereof:

(a) Do any electioneering;

(b) Circulate cards or handbills of any kind;

(c) Solicit signatures to any kind of petition; or

(d) Engage in any practice which interferes with the freedom of voters to exercise their franchise or disrupts the administration of the polling place.

(2) No person may obstruct the doors or entries to a building in which a polling place is located or prevent free access to and from any polling place.

(3) Any election officer, sheriff, constable or other peace officer is hereby authorized, and it is hereby made the duty of such officer, to arrest any person violating the provisions of subsections (1) and (2) of this section, and such offender shall be punished by a fine of not less than twenty-five dollars ($25.00) nor exceeding one thousand dollars ($1,000).

History.
I.C., § 18-2318, as added by 1986, ch. 97, § 2, p. 275; am. 1997, ch. 360, § 1, p. 1061; am. 2006, ch. 71, § 5, p. 216; am. 2007, ch. 202, § 1, p. 620.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "one hundred dollars ($100)" at the end of subsection (3).

The 2007 amendment, by ch. 202, in the introductory paragraph in subsection (1), deleted "on private property" preceding "within one hundred (100) feet" and "or on public property within three hundred (300) feet thereof" from the end.

18-2322. Illegal registration by voter. — Any person who shall willfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides, or will reside prior to the day

of the next ensuing election, except as herein otherwise provided, and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, and will not be a qualified elector on or before the day of the next ensuing election, in the election district in which he causes or endeavors to cause such registry to be made, and any person who shall induce, aid or abet anyone in the commission of either of the acts in this section enumerated and described, shall be fined not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or be confined in the county jail for not less than one (1) month nor more than six (6) months, or both.

History.
I.C., § 18-2322, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 6, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$500.00."

CHAPTER 24

THEFT

SECTION.
18-2406. Defenses.

18-2402. Definitions.

JUDICIAL DECISIONS

ANALYSIS

Jury instructions.
Owner.
Value.

Jury Instructions.
Omission of the word "permanently" in the jury instruction did not change the meaning of the word "deprive" nor did it remove the specific intent element from the jury's consideration. Defendant failed to show that the jury instruction misled the jury, and although it would have been more appropriate for the trial court to instruct on the definition of "deprive" found in subsection (3) or to have given the pattern instruction defining intent to appropriate or deprive, the failure to do so was not reversible error. State v. Caldwell, 140 Idaho 740, 101 P.3d 233 (Ct. App. 2004).

In a criminal trial for grand theft, the district court did not err in rejecting defendant's proposed instruction which presented alternative methods of measuring value, including salvage value, because the method of measuring value in a grand theft case is that specified in paragraph (11)(a). State v. Vargas, 152 Idaho 240, 268 P.3d 1192 (Ct. App. 2012).

Owner.
A seller of goods who has delivered the goods to the buyer, but has not yet been paid in full and does not have a security interest, is not an owner of the goods. State v. Bennett, 150 Idaho 278, 246 P.3d 387 (2010).

Value.
Generally, the "market value" of consumer goods is the reasonable price at which the owner would hold those goods out for sale to the general public, as opposed to the "cost of replacement" which would be the cost for the owner to reacquire the same goods; therefore, the district court did not err in calculating the amount of restitution owed for the property stolen by defendant by using the ascertained

retail value of that property. State v. Smith, 144 Idaho 687, 169 P.3d 275 (Ct. App. 2007).

Where defendant was convicted of grand theft under §§ 18-2403(4) and 18-2407(1)(b)(1) for removing nineteen ten-foot pieces of pipe from a work site, the state provided sufficient evidence that the value of the stolen pipe exceeded $1,000. The owner of the irrigation pump company that removed the stolen pipe from the farm well and later reinstalled the same pipe testified that he would pay over $200 per ten-foot section for used pipe. State v. Vargas, 152 Idaho 240, 268 P.3d 1192 (Ct. App. 2012).

Cited in: State v. Culbreth, 146 Idaho 322, 193 P.3d 869 (Ct. App. 2008).

RESEARCH REFERENCES

A.L.R. — What is "property of another" within statute proscribing larceny, theft, or embezzlement of property of another. 57 A.L.R.6th 445.

18-2403. Theft.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Evidence.
Guilty plea.
Instructions.
Intent.
Owner.
Possession of stolen property.
Sentence.

Constitutionality.

Theft statute could not be interpreted to include mere nonpayment of debt, as it would likely run afoul of Idaho Const., Art. I, § 15, which specified that there shall be no imprisonment for debt in this state except in cases of fraud. State v. Culbreth, 146 Idaho 322, 193 P.3d 869 (Ct. App. 2008).

Evidence.

Court affirmed defendant's conviction for two counts of grand theft by unauthorized control of credit cards under subsection (3) and § 18-2407(1)(b)(3). The court rejected defendant's argument that there was no evidence that he knowingly took the credit cards, stating that proof of grand theft under § 18-2407(1)(b)(3) did not require proof that defendant was aware of the character or value of the property taken; proof that defendant knowingly took unauthorized control of a purse, which was by character a container to hold other objects, was sufficient to support an inference that he intended to deprive the owner of the purse and any contents it held. State v. Solway, 139 Idaho 965, 88 P.3d 784 (Ct. App. 2004).

Defendant's grand theft conviction in violation of § 18-2407(1)(b) and this section was proper pursuant to Idaho R. Evid. 601 because the trial court considered the testimony of the victim's guardian as well as the victim's treating physician in determining the victim's competency on the day of her deposition. To the extent that the deposition responses were inconsistent or incorrect, that went more to the weight and credibility of her testimony than to its admissibility. State v. Vondenkamp, 141 Idaho 878, 119 P.3d 653 (Ct. App. 2005).

Guilty Plea.

Defendant showed a just reason for withdrawal of his guilty plea to grand theft for stealing a newborn calf, because defendant had been affirmatively misled to believe that the value of the calf was irrelevant to his guilty plea, and defendant, therefore, had no reason to question the value of the calf and the record provided no basis to conclude that he had any personal knowledge of its value. Defense counsel apparently made no independent investigation to determine the market value of the calf, and defense counsel had admitted that he mistakenly believed that, even if the value threshold applied, the state's evidence was sufficient to prove a value of more than $150. State v. Salazar-Garcia, 145 Idaho 690, 183 P.3d 778 (Ct. App. 2008).

Instructions.

In prosecution for grand theft, omission in the jury instructions of the material element that the property taken be financial transactions cards constituted fundamental error. However, this omission was harmless, as the

evidence that the wallet contained financial transaction cards was uncontroverted and sufficient for a reasonable mind to conclude, beyond a reasonable doubt, that defendant committed theft of the victim's wallet. State v. Hickman, 146 Idaho 178, 191 P.3d 1098 (2008).

Intent.

Defendant's act of taking her dog from a shelter without authorization in order to avoid paying shelter fees could not constitute a theft of the shelter's labor or services as it could not be said that defendant took, obtained, or withheld the shelter's services. She did not request the shelter's services, and indeed, her dog was taken to the shelter and housed there without defendant's knowledge or consent. State v. Culbreth, 146 Idaho 322, 193 P.3d 869 (Ct. App. 2008).

Owner.

A seller of goods who has delivered the goods to the buyer, but has not yet been paid in full and does not have a security interest, is not an owner of the goods for the purposes of subsection (1) of this section. State v. Bennett, 150 Idaho 278, 246 P.3d 387 (2010).

Possession of Stolen Property.

The state presented substantial and competent evidence that defendant personally possessed stolen pipe, where the owner of a scrapyard testified that defendant delivered loads of pipe, identified as missing from a work site, and the defendant admitted to a detective that he drove a pickup truck loaded with scrap metal. State v. Vargas, 152 Idaho 240, 268 P.3d 1192 (Ct. App. 2012).

Sentence.

Where defendant was involved in a series of home burglaries, he was properly convicted of seven counts of burglary in violation of § 18-1401, and one count of grand theft in violation of § 18-2407(1)(b) and this section. He was properly sentenced as a persistent violator under § 19-2514 to concurrent life sentences with ten years determinate on all of these charges. State v. Dixon, 140 Idaho 301, 92 P.3d 551 (Ct. App. 2004).

Defendant's sentence after being convicted of grand theft was inappropriate because information in the arrest reports, the competency evaluation reports, and the PSI cried out for a thorough assessment of defendant's mental condition. That information could have aided in assessing defendant's true culpability for the offense, his suitability for probation, and the type of treatment that should have been ordered or recommended during probation or incarceration. State v. Banbury, 145 Idaho 265, 178 P.3d 630 (Ct. App. 2007).

While on probation for felony injury to a child, defendant was convicted of 14 counts of grand theft. Her probation was revoked, 10 years were imposed on the felony injury charge, and 5 years consecutive on each of the theft charges. Felony injury sentence was not unduly harsh, but consecutive sentences for each of the theft charges were considered excessive. State v. Whittle, 145 Idaho 49, 175 P.3d 211 (Ct. App. 2007).

District court did not abuse its discretion by failing to further reduce defendant's sentence when granting his Idaho Crim. R. 35 motion, because defendant's sentence of twenty-two months fixed, life indeterminate for grand theft was reasonable, when defendant's criminal history showed a record of continuing criminality for over twenty-five years, defendant clearly presented a danger to society, as the only substantial period of time he had not engaged in criminal behavior was the twelve years he spent in prison, and defendant's prior criminal acts had not been relatively minor. State v. Arthur, 145 Idaho 219, 177 P.3d 966 (2008).

Trial court abused its discretion by imposing a combined 78-year sentence, with 29 years fixed, for defendant's nine counts of grand theft by deception, as the sentences were longer than necessary to deter similar conduct in the future, to exact retribution and punishment, and to protect society. The court did not give sufficient consideration to defendant's status as a first time offender, his expressions of remorse, the likelihood of rehabilitation and deterrence possible with a lesser cumulative sentence, and his amenability to make at least some restitution. Cook v. State, 145 Idaho 482, 180 P.3d 521 (Ct. App. 2008).

Cited in: State v. Caldwell, 140 Idaho 740, 101 P.3d 233 (Ct. App. 2004); State v. Perry, 144 Idaho 266, 159 P.3d 903 (Ct. App. 2007); State v. Todd, 147 Idaho 321, 208 P.3d 303 (Ct. App. 2009); State v. Barnes, 147 Idaho 587, 212 P.3d 1017 (Ct. App. 2009); State v. Justice, 152 Idaho 48, 266 P.3d 1153 (Ct. App. 2011).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes relating to offense of identity theft. 125 A.L.R.5th 537.

What is "property of another" within statute proscribing larceny, theft, or embezzlement of property of another. 57 A.L.R.6th 445.

Civil liability under 18 U.S.C.A. § 2511(1)(a) for unauthorized interception or

viewing of satellite television broadcasts. 55 A.L.R. Fed 2d 419.

18-2406. Defenses. — (1) It is no defense to a charge of theft of property that the offender has an interest therein, when the owner also has an interest to which the offender is not entitled.

(2) Where the property involved is that of the offender's spouse, no prosecution for theft may be maintained unless the parties were not living together as man and wife and were living in separate abodes at the time of the alleged theft.

(3) In any prosecution for theft committed by trespassory taking or the offense previously known as embezzlement, it is an affirmative defense that the property was appropriated openly and avowedly, and under a claim of right made in good faith. It is not a defense to a theft committed by such conduct that the accused intended to restore the property taken, but may be considered by the court to mitigate punishment if the property is voluntarily and actually restored (or tendered) prior to the filing of any complaint or indictment relating thereto, and this provision does not excuse the unlawful retention of the property of another to offset or pay demands held against such other person.

(4) In any prosecution for theft by extortion committed by instilling in the victim a fear that he or another person would be charged with a crime, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.

(5) It is no defense to a prosecution for theft under a provision of this chapter that the defendant, by reason of the same conduct, also committed an act specified as a crime in another chapter of title 18, or another title of the Idaho Code.

History.
I.C., § 18-2406, as added by 1981, ch. 183, § 2, p. 319; am. 2008, ch. 23, § 1, p. 36.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 23, substituted "such other person" for "the accused" at the end in subsection (3).

18-2407. Grading of theft.

JUDICIAL DECISIONS

ANALYSIS

Evidence sufficient.
Guilty plea.
Instructions.
Livestock.
Sentence.
Value of property.

Evidence Sufficient.

Court affirmed defendant's conviction for two counts of grand theft by unauthorized control of credit cards under § 18-2403(3) and paragraph (1)(b)(3) of this section. The court rejected defendant's argument that there was no evidence that he knowingly took the credit cards, stating that proof of grand theft under paragraph (1)(b)(3) did not require proof that defendant was aware of the character or value of the property taken; proof that defendant knowingly took unauthorized control of a purse, which was by character a container to hold other objects, was sufficient to support an inference that he intended to deprive the owner of the purse and any contents it held. State v. Solway, 139 Idaho 965, 88 P.3d 784 (Ct. App. 2004).

Defendant's grand theft conviction in violation of § 18-2403(3) and paragraph (1)(b) of this section was proper pursuant to Idaho R. Evid. 601 because the trial court considered the testimony of the victim's guardian as well as the victim's treating physician in determining the victim's competency on the day of her deposition. To the extent that the deposition responses were inconsistent or incorrect, that went more to the weight and credibility of her testimony than to its admissibility. State v. Vondenkamp, 141 Idaho 878, 119 P.3d 653 (Ct. App. 2005).

Guilty Plea.

Defendant showed a just reason for withdrawal of his guilty plea to grand theft for stealing a newborn calf, because defendant had been affirmatively misled to believe that the value of the calf was irrelevant to his guilty plea, and defendant, therefore, had no reason to question the value of the calf and the record provided no basis to conclude that he had any personal knowledge of its value. Defense counsel apparently made no independent investigation to determine the market value of the calf, and defense counsel had admitted that he mistakenly believed that, even if the value threshold applied, the state's evidence was sufficient to prove a value of more than $150. State v. Salazar-Garcia, 145 Idaho 690, 183 P.3d 778 (Ct. App. 2008).

Instructions.

In prosecution for grand theft, omission in the jury instructions of the material element that the property taken be financial transactions cards constituted fundamental error. However, this omission was harmless, as the evidence that the wallet contained financial transaction cards was uncontroverted and sufficient for a reasonable mind to conclude, beyond a reasonable doubt, that defendant committed theft of the victim's wallet. State v. Hickman, 146 Idaho 178, 191 P.3d 1098 (2008).

In a criminal trial for grand theft, the district court did not err in rejecting defendant's proposed instruction which presented alternative methods of measuring value, including salvage value, because the method of measuring value in a grand theft case is that specified in § 18-2402 (11)(a). State v. Vargas, 152 Idaho 240, 268 P.3d 1192 (Ct. App. 2012).

Livestock.

Defendant was guilty of grand theft for stealing three calves, even though the value of each calf was less than $150, because their aggregate value exceeded $150. State v. Morrison, 143 Idaho 459, 147 P.3d 91 (Ct. App. 2006).

Sentence.

Where defendant was involved in a series of home burglaries, he was properly convicted of seven counts of burglary in violation of § 18-1401, and one count of grand theft in violation of § 18-2403(1) and paragraph (1)(b) of this section. He was properly sentenced as a persistent violator under § 19-2514 to concurrent life sentences with ten years determinate on all of these charges. State v. Dixon, 140 Idaho 301, 92 P.3d 551 (Ct. App. 2004).

Defendant's sentence after being convicted of grand theft was inappropriate because information in the arrest reports, the competency evaluation reports, and the PSI cried out for a thorough assessment of defendant's mental condition. That information could have aided in assessing defendant's true culpability for the offense, his suitability for probation, and the type of treatment that should have been ordered or recommended during probation or incarceration. State v. Banbury, 145 Idaho 265, 178 P.3d 630 (Ct. App. 2007).

While on probation for felony injury to a child, defendant was convicted of 14 counts of grand theft. Her probation was revoked, 10 years were imposed on the felony injury charge, and 5 years consecutive on each of the theft charges. Felony injury sentence was not unduly harsh, but consecutive sentences for each of the theft charges were considered excessive. State v. Whittle, 145 Idaho 49, 175 P.3d 211 (Ct. App. 2007).

District court did not abuse its discretion by failing to further reduce defendant's sentence when granting his Idaho Crim. R. 35 motion, because defendant's sentence of twenty-two months fixed, life indeterminate for grand theft was reasonable, when defendant's criminal history showed a record of continuing criminality for over twenty-five years, defendant clearly presented a danger to society, as the only substantial period of time he had not engaged in criminal behavior was the twelve years he spent in prison, and defendant's prior criminal acts had not been relatively

minor. State v. Arthur, 145 Idaho 219, 177 P.3d 966 (2008).

Trial court abused its discretion by imposing a combined 78-year sentence, with 29 years fixed, for defendant's nine counts of grand theft by deception, as the sentences were longer than necessary to deter similar conduct in the future, to exact retribution and punishment, and to protect society. The court did not give sufficient consideration to defendant's status as a first time offender, his expressions of remorse, the likelihood of rehabilitation and deterrence possible with a lesser cumulative sentence, and his amenability to make at least some restitution. Cook v. State, 145 Idaho 482, 180 P.3d 521 (Ct. App. 2008).

Value of Property.

Where defendant was convicted of grand theft under § 18-2403(4) and paragraph (1)(b)(1) of this section for removing nineteen ten-foot pieces of pipe from a work site, the state provided sufficient evidence that the value of the stolen pipe exceeded $1,000. The owner of the irrigation pump company that removed the stolen pipe from the farm well and later reinstalled the same pipe testified that he would pay over $200 per ten-foot section for used pipe. State v. Vargas, 152 Idaho 240, 268 P.3d 1192 (Ct. App. 2012).

Cited in: State v. Perry, 144 Idaho 266, 159 P.3d 903 (Ct. App. 2007); State v. Todd, 147 Idaho 321, 208 P.3d 303 (Ct. App. 2009); State v. Barnes, 147 Idaho 587, 212 P.3d 1017 (Ct. App. 2009); State v. Justice, 152 Idaho 48, 266 P.3d 1153 (Ct. App. 2011).

CHAPTER 25

ESCAPE OR RESCUE OF PRISONERS

SECTION.

18-2501. Rescuing prisoners.
18-2503. Carrying prisoner things to aid escape. [Repealed.]
18-2505. Escape by one charged with, convicted of, or on probation for a felony — Escape by a juvenile from custody.
18-2506. Escape by one charged with or convicted of a misdemeanor — Escape by a juvenile from custody.
18-2507. Expense of prosecution — How paid.
18-2509. Punishment for violation of preceding section.
18-2510. Possession, introduction or removal of certain articles into or from correctional facilities.
18-2511. Possession of a controlled substance or dangerous weapon. [Repealed.]

18-2501. Rescuing prisoners. — Every person who rescues, or attempts to rescue, or aids another person in rescuing or attempting to rescue, any prisoner from any prison, or from any officer or person having him in lawful custody, is punishable as follows:

(1) If such prisoner was in custody upon a conviction of felony punishable by death, by imprisonment in the state prison not less than one (1) nor more than fourteen (14) years.

(2) If such prisoner was in custody upon a conviction of any other felony, by imprisonment in the state prison not less than six (6) months nor more than five (5) years.

(3) If such prisoner was in custody upon a charge of felony, by a fine not exceeding one thousand dollars ($1,000) and imprisonment in the county jail not exceeding one (1) year.

(4) If such prisoner was in custody, otherwise than upon a charge or conviction of felony, by fine not exceeding one thousand dollars ($1,000) and imprisonment in the county jail not exceeding six (6) months.

History.
I.C., § 18-2501, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 7, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$500.00" in subsection (4).

18-2503. Carrying prisoner things to aid escape. [Repealed.]

Repealed by S.L. 2012, ch. 82, § 1, effective March 20, 2012. For comparable provisions, see § 18-2510.

History.
I.C., § 18-2503, as added by 1972, ch. 336, § 1, p. 844.

18-2505. Escape by one charged with, convicted of, or on probation for a felony — Escape by a juvenile from custody. — (1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any correctional facility, as defined in section 18-101A, Idaho Code, including any private correctional facility, or who while outside the walls of such correctional facility in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such correctional facility, who escapes or attempts to escape from such officer or person, or from such correctional facility, or from such factory, farm or other place without the walls of such correctional facility, shall be guilty of a felony, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged. Escape shall be deemed to include abandonment of a job site or work assignment without the permission of an employment supervisor or officer. Escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking or monitoring, or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care. A person may not be charged with the crime of escape for leaving the aforementioned area of restriction unless the person was notified in writing by the court at the time of setting of bail, release or sentencing of the consequences of violating this section by intentionally leaving the area of restriction.

(2) Any person who is charged with, found to have committed, adjudicated for or is on probation for an offense which would be a felony if committed by an adult, and who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of any officer or person shall be subject to proceedings under chapter 5, title 20, Idaho Code, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to section

20-508 or 20-509, Idaho Code, the person shall be guilty of a felony for a violation of this section and shall be subject to adult criminal proceedings.

History.

I.C., § 18-2505, as added by 1972, ch. 336, § 1, p. 844; am. 1990, ch. 313, § 1, p. 858; am. 1995, ch. 74, § 1, p. 194; am. 1997, ch. 77, § 1, p. 161; am. 1998, ch. 359, § 1, p. 1123; am. 2000, ch. 106, § 1, p. 234; am. 2000, ch. 151, § 1, p. 387; am. 2000, ch. 272, § 6, p. 786; am. 2004, ch. 50, § 1, p. 236; am. 2007, ch. 114, § 1, p. 329; am. 2010, ch. 28, § 1, p. 47.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 114, added the last two sentences in subsection (1).

The 2010 amendment, by ch. 28, deleted "and detention" preceding "or the area" in the third sentence of subsection (1).

18-2506. Escape by one charged with or convicted of a misdemeanor — Escape by a juvenile from custody. —

(1)(a) Every prisoner charged with or convicted of a misdemeanor who is confined in any county jail or other place or who is engaged in any county work outside of such jail or other place, or who is in the lawful custody of any officer or person, who escapes or attempts to escape therefrom, is guilty of a misdemeanor. Escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking or monitoring, or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care. A person may not be charged with the crime of escape for leaving the aforementioned area of restriction unless the person was notified in writing by the court at the time of setting of bail, release or sentencing of the consequences of violating this section by intentionally leaving the area of restriction.

(b) In cases involving escape or attempted escape by use of threat, intimidation, force, violence, injury to person or property other than that of the prisoner, or wherein the escape or attempted escape was perpetrated by use or possession of any weapon, tool, instrument or other substance, the prisoner shall be guilty of a felony.

(2) Any person who is charged with, found to have committed, adjudicated for or is on probation for an offense which would be a misdemeanor if committed by an adult, and who is confined in a juvenile detention facility or other secure or nonsecure facility for juveniles and who escapes or attempts to escape from the facility or from the lawful custody of an officer or person, shall be subject to proceedings under the provisions of chapter 5, title 20, Idaho Code, for an act which would be a misdemeanor if committed by an adult, or, if the escape or attempted escape was undertaken as provided in subsection (1)(b) of this section, for an offense which would be a felony if committed by an adult. If the juvenile is or has been proceeded against as an adult, pursuant to section 20-508 or 20-509, Idaho Code, the person shall be guilty of a misdemeanor, or if subsection (1)(b) of this section applies, of a felony and, in either case, shall be subject to adult criminal proceedings.

History.
I.C., § 18-2506, as added by 1972, ch. 336, § 1, p. 844; am. 1995, ch. 74, § 2, p. 194; am. 1997, ch. 77, § 2, p. 161; am. 2000, ch. 106, § 2, p. 234; am. 2007, ch. 114, § 2, p. 329; am. 2010, ch. 28, § 2, p. 47.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 114, added the last two sentences in subsection (1)(a).

The 2010 amendment, by ch. 28, deleted "and detention" preceding "or the area" in the second sentence of paragraph (1)(a).

18-2507. Expense of prosecution — How paid. — Whenever a person is prosecuted under any of the provisions of section 18-2505, Idaho Code, and whenever a prisoner in the custody of the board of correction housed in a state correctional facility, as defined in section 18-101A, Idaho Code, shall be prosecuted for any crime committed therein, the clerk of the district court shall make out a statement of all the costs incurred by the county for the prosecution of such case, and for the guarding and keeping of such prisoner, and when certified by the judge who tried the case, such statement shall be submitted to and reviewed by the board of examiners. If approved, the board of examiners shall submit the claim to the Idaho department of correction who shall pay the claim to the treasurer of the county where the trial was conducted. The provisions of this section shall apply to prosecution of a prisoner in the custody of the board of correction and housed in a private correctional facility unless otherwise provided for in any contract between the state of Idaho and the private prison contractor entered into pursuant to chapter 2, title 20, Idaho Code.

Costs of prosecution of all other prisoners housed in a private correctional facility shall be recoverable from the private prison contractor, as provided in section 20-809, Idaho Code.

History.
I.C., § 18-2507, as added by 1972, ch. 336, § 1, p. 844; am. 1984, ch. 79, § 1, p. 146; am. 1985, ch. 80, § 1, p. 155; am. 2000, ch. 272, § 7, p. 786; am. 2001, ch. 335, § 11, p. 1177; am. 2009, ch. 104, § 1, p. 320.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 104, in the first paragraph, substituted "submitted to and reviewed by the board of examiners" for "audited by the board of examiners" at the end of the first sentence and rewrote and combined the second and third sentences, which formerly read: "If approved, the board of examiners shall submit the claim, with a request for an appropriation, to the legislature at its first session after the rendition of such claim. If the legislature appropriates funds for such claim, the amount shall be paid by the board of examiners to the treasurer of the county where the trial was had."

18-2509. Punishment for violation of preceding section. — Any person violating the provisions of this act upon conviction, shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000), or imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days, or both.

History.
I.C., § 18-2509, as added by 1972, ch. 336, § 1, p. 844; am. 2005, ch. 359, § 4, p. 1133.

18-2510. Possession, introduction or removal of certain articles into or from correctional facilities. — (1) No person including a prisoner, except as authorized by law or with permission of the facility head, shall knowingly:

(a) Introduce, or attempt to introduce, contraband into a correctional facility or the grounds of a correctional facility; or

(b) Convey, or attempt to convey, contraband to a prisoner confined in a correctional facility; or

(c) Possess, or attempt to possess, contraband within a correctional facility; or

(d) Receive, obtain or remove, or attempt to receive, obtain or remove, contraband from a correctional facility.

(2) Any person including a prisoner who violates any provision of subsection (1) of this section shall be guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in the county jail for a period not exceeding one (1) year or by a fine not exceeding one thousand dollars ($1,000), or by both such imprisonment and fine.

(3) No person including a prisoner, except as authorized by law or with permission of the facility head, shall knowingly:

(a) Introduce, or attempt to introduce, major contraband into a correctional facility or the grounds of a correctional facility; or

(b) Convey, or attempt to convey, major contraband to a prisoner confined in a correctional facility; or

(c) Possess, or attempt to possess, major contraband within a correctional facility; or

(d) Receive, obtain or remove, or attempt to receive, obtain or remove, major contraband from a correctional facility.

(4) Any person including a prisoner who violates any provision of subsection (3) of this section shall be guilty of a felony and on conviction shall be punished by imprisonment in the state prison for a period not exceeding five (5) years or by a fine not exceeding ten thousand dollars ($10,000), or by both such imprisonment and fine.

(5) As used in this section:

(a) "Contraband" means any article or thing that a prisoner confined in a correctional facility is prohibited by statute, rule or policy from obtaining or possessing and the use of which could endanger the safety or security of the correctional facility, any person therein or the public.

(b) "Correctional facility" means a correctional facility as defined in section 18-101A, Idaho Code.

(c) "Major contraband" means:

(i) Any controlled substance as defined in section 37-2701(e), Idaho Code;

(ii) Any tobacco product in excess of three (3) ounces;

(iii) Any firearm or dangerous weapon including explosives or combustibles or any plans or materials that may be used in the making or manufacturing of such weapons, explosives or devices;

(iv) Any telecommunication equipment or component hardware including, but not limited to, any device carried, worn or stored that is designed or intended to receive or transmit verbal or written messages, access or store data or connect electronically to the internet or any other electronic device that allows communications in any form. Such devices include, but are not limited to, cellular telephones, portable two-way pagers, hand-held radios, global position satellite system equipment, subscriber identity module (SIM) cards, portable memory chips, batteries, chargers, blackberry-type devices or smart phones, personal digital assistants or PDA's and laptop computers. The term also includes any new technology that is developed for similar purposes. Excluded from this definition is any device having communication capabilities that has been approved by the facility head for investigative or institutional security purposes or for conducting other official business;

(v) Any object or instrument intended or reasonably likely to be used in the planning or aiding in an escape or attempted escape from a correctional facility.

(d) "Prisoner" means a prisoner or a juvenile offender as those terms are defined in section 18-101A, Idaho Code.

History.
I.C., § 18-2510, as added by 2012, ch. 82, § 2, p. 234.

STATUTORY NOTES

Prior Laws.
Former § 18-2510, Illicit conveyance of articles into correctional facilities, which comprised I.C., § 18-2510, as added by 1972, ch. 336, 1, p. 844; am. 1985, ch. 78, § 1, p. 151; am. 2000, ch. 272, § 8, p. 786; am. 2005, ch. 359, § 5, p. 1133, was repealed by S.L. 2012, ch. 782, § 1, effective March 20, 2012.

Compiler's Notes.
The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.
Section 5 of S.L. 2012, ch. 82 declared an emergency. Approved March 20, 2012.

18-2511. Possession of a controlled substance or dangerous weapon. [Repealed.]

Repealed by S.L. 2012, ch. 82, § 1, effective March 20, 2012. For comparable provisions, see § 18-2510.

History.
I.C., § 18-2511, as added by 1974, ch. 90, § 1, p. 1186; am. 1993, ch. 166, § 1, p. 423.

CHAPTER 26

EVIDENCE FALSIFIED OR CONCEALED AND WITNESSES INTIMIDATED OR BRIBED

18-2603. Destruction, alteration or concealment of evidence.

JUDICIAL DECISIONS

Cited in: State v. Izaguirre, 145 Idaho 820, 186 P.3d 676 (Ct. App. 2008).

RESEARCH REFERENCES

A.L.R. — Electronic spoliation of evidence. 3 A.L.R.6th 13.

18-2604. Intimidating a witness.

JUDICIAL DECISIONS

ANALYSIS

Effectiveness of threat.
Evidence.
Jury instructions.

Effectiveness of Threat.

In order to be found guilty of the crime of intimidating a witness, it is not necessary for the defendant's threats to have been effective. The defendant's actions, combined with an intent to intimidate a witness in a criminal proceeding are what constitute the crime. State v. Mercer, 143 Idaho 108, 138 P.3d 308 (2006).

Evidence.

Defendant's conviction for lewd conduct with a minor under 16 and intimidating a witness was upheld because evidence of prior charges was properly admitted since testimony regarding those past acts was relevant because defendant committed sexual abuse in a similar manner, against similarly situated victims on multiple occasions, and the testimony was admissible for corroboration purposes; the exclusion of evidence concerning the ultimate disposition of the prior charges was appropriate because the evidence was not relevant. State v. Kremer, 144 Idaho 286, 160 P.3d 443 (Ct. App. 2007).

After a break-up, defendant vandalized property belonging to friends of his ex-girlfriend. Subsequently he went to the friends' home and threw the ex-girlfriend's clothing on the floor of their garage in their presence. Although defendant was rude and clearly angry, the evidence did not support a conviction for burglary for the purpose of witness intimidation. State v. Curry, 153 Idaho 394, 283 P.3d 141 (Ct. App. 2012).

Jury Instructions.

Because two jury instructions given by the trial court did not require the jury to find that defendant possessed the requisite intent to prevent a witness from testifying freely, fully, and truthfully, both instructions constituted non-harmless fundamental error. State v. Anderson, 144 Idaho 743, 170 P.3d 886 (2007).

Where defendant was charged under this section, it was plain error not to include an instruction that defendant's act had to be done to prevent the witness from testifying, as an express element of the crime. This was plain error and not harmless because the case hinged on the testimony of the victim, which was subject to a number of reasons for the jury to doubt its credibility. State v. Sutton, 151 Idaho 161, 254 P.3d 62 (Ct. App. 2011).

CHAPTER 29

FALSE IMPRISONMENT

18-2901. False imprisonment defined.

JUDICIAL DECISIONS

Cited in: State v. Joy, — Idaho —, 304 P.3d 276 (2013).

CHAPTER 31

FALSE PRETENSES, CHEATS AND MISREPRESENTATIONS

SECTION.
18-3122. Definitions.
18-3124. Fraudulent use of a financial transaction card or number.
18-3125. Criminal possession of financial transaction card, financial transaction number and FTC forgery devices.
SECTION.
18-3126. Misappropriation of personal identifying information.
18-3126A. Acquisition of personal identifying information by false authority.
18-3128. Penalty for violation.

18-3122. Definitions. — The following words and phrases used in this chapter mean:

(1) "Authorized credit card merchant" means a person or organization who is authorized by an issuer to furnish money, goods, services or anything of value upon presentation of a financial transaction card or a financial transaction card account number by a card holder, and to present valid credit card sales drafts to the issuer for payment.

(2) "Automated banking device" means any machine which, when properly activated by a financial transaction card and/or a personal identification code, may be used for any of the purposes for which a financial transaction card may be used.

(3) "Card holder" means any person or organization named on the face of a financial transaction card to whom, or for whose benefit, a financial transaction card is issued by an issuer.

(4) "Credit card sales draft" means:

(a) Any sales slip, draft, voucher or other written or electronic record of a sale of goods, services or anything else of value made or purported to be made to or at the request of a card holder with a financial transaction card, financial transaction card account number or personal identification code; or

(b) Any evidence, however manifested, of any right or purported right to collect from a card holder funds due or purported to be due with respect to any sale or purported sale.

(5) "Expired financial transaction card" means any financial transaction card which is no longer valid because the terms agreed to have been cancelled or have elapsed.

(6) "Financial transaction card" or "FTC" means any instrument or device

known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or any instrument or device used in providing the card holder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or traveler's checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.

(7) "Financial transaction card account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.

(8) "Issuer" means a business organization or financial institution or its duly authorized agent which issues a financial transaction card.

(9) "Personal identification code" means any numerical and/or alphabetical code assigned to the card holder of a financial transaction card by the issuer to permit the authorized electronic use of that FTC.

(10) "Personal identifying information" means the name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, checking account number, savings account number, financial transaction card number, or personal identification code of an individual person, or any other numbers or information which can be used to access a person's financial resources.

(11) "Revoked financial transaction card" means an FTC which is no longer valid because permission to use it has been suspended or terminated by the issuer with actual notice having been made upon the card holder.

History.

I.C., § 18-3122, as added by 1981, ch. 164, § 1, p. 288; am. 1991, ch. 331, § 1, p. 856; am. 1999, ch. 124, § 1, p. 361; am. 2007, ch. 33, § 1, p. 74.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 33, inserted "or information" near the end of subsection (10).

18-3123. Forgery of a financial transaction card.

JUDICIAL DECISIONS

Knowledge of Forgery or Theft.

Witness's testimony that defendant attempted to cover up his accomplice's use of the stolen card, by claiming the credit card as his own, was probative to show defendant's awareness that the credit card was stolen. The evidence addressed the state's burden to prove that defendant used the credit card with intent to defraud, § 18-3123, and there was no risk of unfair prejudice from its intro-

duction. State v. Waller, 140 Idaho 764, 101 P.3d 708 (Ct. App. 2004).

18-3124. Fraudulent use of a financial transaction card or number. — It is a violation of the provisions of this section for any person with the intent to defraud:

(1) To use an FTC or FTC number to knowingly and willfully exceed the actual balance of the demand deposit account or time deposit account;

(2) To use an FTC or FTC number to willfully exceed an authorized credit line in the amount of one thousand dollars ($1,000) or more, or fifty percent (50%) of such authorized credit line, whichever is greater;

(3) To willfully deposit into his account or any other account by means of an automatic banking device, any false, forged, fictitious, altered or counterfeit check draft, money order, or any other such document;

(4) To knowingly sell or attempt to sell credit card sales drafts to an authorized credit card merchant or any other person or organization, for any consideration whether at a discount or otherwise, or present or cause to be presented to the issuer or an authorized credit card merchant, for payment or collection, any credit card sales draft, or purchase or attempt to purchase any credit card sales draft for presentation to the issuer or an authorized credit card merchant for payment or collection if:

(a) Such draft is counterfeit or fictitious;

(b) The purported sale evidenced by such credit card sales draft did not take place;

(c) The purported sale was not authorized by the card holder;

(d) The items or services purported to be sold as evidenced by such credit card sales draft are not delivered or rendered to the card holder or person intended to receive them; or

(e) If purportedly delivered or rendered, such goods or services are of materially lesser value or quality from that intended by the purchaser, or are materially different from goods or services represented by the seller or his agent to the purchaser, or have substantial discrepancies from goods or services impliedly represented by the purchase price when compared with the actual goods or services purportedly delivered or rendered.

(5) To knowingly keep or maintain in any manner carbon or other impressions or copies of credit card sales drafts, and to use such impressions or copies for the purpose of creating any fictitious or counterfeit credit sales draft, or to engage in any other activity prohibited in this section.

History.

I.C., § 18-3124, as added by 1981, ch. 164, § 3, p. 288; am. 1991, ch. 331, § 3, p. 856; am. 1999, ch. 124, § 2, p. 361; am. 2002, ch. 72, § 1, p. 158; am. 2007, ch. 33, § 2, p. 74.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 33, deleted former subsections (1) and (5), which read: "(1) To knowingly obtain or attempt to obtain credit or to purchase or attempt to purchase any goods, property, or service, by the use of any false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC, by an FTC account number, or by the use of any FTC issued" and "(5) To make application for an FTC to an issuer, while knowingly making or causing to be made a false statement or

report relative to his name, occupation, financial condition, assets, or to willfully and substantially undervalue any indebtedness for the purposes of influencing the issuer to issue an FTC," and redesignated the subsequent subsections accordingly. See § 18-3125.

RESEARCH REFERENCES

A.L.R. — Criminal liability for unauthorized use of credit card under state credit card statutes. 68 A.L.R.6th 527.

18-3125. Criminal possession of financial transaction card, financial transaction number and FTC forgery devices. — It is a felony punishable as provided in subsection (3) of section 18-3128, Idaho Code, for any person:

(1) To acquire an FTC or FTC number from another without the consent of the card holder or the issuer, or to, with the knowledge that it has been so acquired, receive an FTC or FTC number with the intent to use to defraud, or to sell, or to transfer the FTC or FTC number to another person with the knowledge that it is to be used to defraud;

(2) To acquire an FTC or FTC number that he knows to have been lost, mislaid, or delivered under a mistake as to the identity or address of the card holder, and to retain possession with the intent to use to defraud or to sell or transfer to another person with the knowledge that it is to be used to defraud;

(3) To, with the intent to defraud, knowingly possess a false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or any FTC account number;

(4) To, with the intent to defraud, knowingly obtain or attempt to obtain credit or purchase or attempt to purchase any goods, property or service, by use of any false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or FTC account number;

(5) To, with the intent to defraud, knowingly produce to another person or procure, a false, fictitious, counterfeit, revoked, expired or fraudulently obtained FTC or any FTC account number;

(6) To, with the intent to defraud and while making an application for an FTC to an issuer, knowingly make or cause to be made, a false written or oral statement or representation respecting his name, personal identifying information, occupation, financial condition, assets, or to materially undervalue any indebtedness for the purpose of influencing the issuer to issue an FTC.

History.
I.C., § 18-3125, as added by 1981, ch. 164, § 4, p. 288; am. 2002, ch. 72, § 2, p. 158; am. 2007, ch. 33, § 3, p. 74.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 33, added subsections (3) through (6).

18-3126. Misappropriation of personal identifying information. — It is unlawful for any person to obtain or record personal identifying information of another person without the authorization of that person, with the intent that the information be used to obtain, or attempt to obtain, credit, money, goods or services without the consent of that person.

History.
I.C., § 18-3126, as added by 1999, ch. 124, § 3, p. 361; am. 2008, ch. 78, § 1, p. 205.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 78, deleted "in the name of the other person" following "goods or services."

18-3126A. Acquisition of personal identifying information by false authority. — It is unlawful for any person to falsely assume or pretend to be a member of the armed forces of the United States or an officer or employee acting under authority of the United States or any department, agency or office thereof or of the state of Idaho or any department, agency or office thereof, and in such pretended character, seek, demand, obtain or attempt to obtain personal identifying information of another person.

History.
I.C., § 18-3126A, as added by 2005, ch. 219, § 1, p. 695.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2005, ch. 218 declared an emergency. Approved March 31, 2005.

18-3128. Penalty for violation. — (1) Any person found guilty of a violation of section 18-3124, 18-3125A or 18-3127, Idaho Code, is guilty of a misdemeanor. In the event that the retail value of the goods obtained or attempted to be obtained through any violation of the provisions of section 18-3124, 18-3125A or 18-3127, Idaho Code, exceeds three hundred dollars ($300), any such violation will constitute a felony, and will be punished as provided in this section. Any person found guilty of a violation of section 18-3125, 18-3126 or 18-3126A, Idaho Code, is guilty of a felony.

(2) For purposes of this section, the punishment for a misdemeanor shall be a fine of up to one thousand dollars ($1,000) or up to one (1) year in the county jail, or both such fine and imprisonment.

(3) For purposes of this section, the punishment for a felony shall be a fine of up to fifty thousand dollars ($50,000) or imprisonment in the state prison not exceeding five (5) years, or both such fine and imprisonment.

History.
I.C., § 18-3127, as added by 1981, ch. 164, § 6, p. 288; am. 1982, ch. 100, § 1, p. 279; am. 1991, ch. 331, § 6, p. 856; am. 1994, ch. 132, § 3, p. 301; am. and redesig. 1999, ch. 124, § 5, p. 361; am. 2002, ch. 72, § 3, p. 158; am. 2005, ch. 219, § 2, p. 695; am. 2007, ch. 33, § 4, p. 74.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 33, in subsection (1), twice deleted "18-3126" following "18-3125A," and in the last sentence, inserted "18-3125, 18-3126 or."

Effective Dates.

Section 3 of S.L. 2005, ch. 218 declared an emergency. Approved March 31, 2005.

CHAPTER 32

FALSIFYING, MUTILATING OR CONCEALING PUBLIC RECORDS OR WRITTEN INSTRUMENTS

SECTION.

18-3202. Private person stealing, mutilating or falsifying public records.

18-3202. Private person stealing, mutilating or falsifying public records. — Every person not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section, is punishable by imprisonment in the state prison not exceeding five (5) years, or in a county jail not exceeding one (1) year, or by a fine not exceeding one thousand dollars ($1,000), or by both.

History.

I.C., § 18-3202, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 8, p. 216.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$100.00."

CHAPTER 33

FIREARMS, EXPLOSIVES AND OTHER DEADLY WEAPONS

SECTION.

18-3302. Issuance of licenses to carry concealed weapons.
18-3302B. Carrying concealed weapons under the influence of alcohol or drugs.
18-3302H. Carrying of concealed firearms by qualified retired law enforcement officers.
18-3302I. Threatening violence on school grounds.
18-3302J. Preemption of firearms regulation.
18-3302K. Issuance of enhanced licenses to carry concealed weapons.
18-3304. Aiming firearms at others.
18-3305. Discharge of arms aimed at another.
18-3306. Injuring another by discharge of aimed firearms.
18-3309. Authority of governing boards of public colleges and universities regarding firearms.
18-3312. Injuring another by careless handling and discharge of firearms.
18-3313. False reports of explosives in public or private places a felony — Penalty.
18-3314. Resident's purchase of firearm out-of-state.
18-3315. Nonresident — Purchase of firearm in Idaho.
18-3315A. Prohibition of federal regulation of certain firearms.
18-3315B. Prohibition of regulation of certain firearms.
18-3317. Unlawful discharge of a firearm at a

SECTION.
dwelling house, occupied building, vehicle or mobile home.
18-3318. Definitions.
18-3319A. Unlawful acts — Hoax destructive device.
SECTION.
18-3325. Prohibition — Possession — Use of conducted energy device — Penalties.

18-3301. Deadly weapon — Possession with intent to assault.

RESEARCH REFERENCES

A.L.R. — Cigarette lighter as deadly or dangerous weapon. 22 A.L.R.6th 533.

Construction and application of United States supreme court holdings in *District of Columbia v. Heller,* 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *McDonald v. City of Chicago, Ill.,* 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) respecting second amendment right to keep and bear arms, to state or local laws regulating firearms or other weapons. 64 A.L.R.6th 131.

18-3302. Issuance of licenses to carry concealed weapons. — (1) The sheriff of a county, on behalf of the state of Idaho, shall, within ninety (90) days after the filing of an application by any person who is not disqualified from possessing or receiving a firearm under state or federal law, issue a license to the person to carry a weapon concealed on his person within this state. For licenses issued before July 1, 2006, a license shall be valid for four (4) years from the date of issue. For licenses issued on or after July 1, 2006, a license shall be valid for five (5) years from the date of issue. The citizen's constitutional right to bear arms shall not be denied to him, unless one (1) of the following applies. He:

(a) Is ineligible to own, possess or receive a firearm under the provisions of state or federal law;

(b) Is formally charged with a crime punishable by imprisonment for a term exceeding one (1) year;

(c) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding one (1) year;

(d) Is a fugitive from justice;

(e) Is an unlawful user of, or addicted to, marijuana or any depressant, stimulant or narcotic drug, or any other controlled substance as defined in 21 U.S.C. 802;

(f) Is currently suffering or has been adjudicated as follows, based on substantial evidence:

(i) Lacking mental capacity as defined in section 18-210, Idaho Code;

(ii) Mentally ill as defined in section 66-317, Idaho Code;

(iii) Gravely disabled as defined in section 66-317, Idaho Code; or

(iv) An incapacitated person as defined in section 15-5-101(a), Idaho Code.

(g) Is or has been discharged from the armed forces under dishonorable conditions;

(h) Is or has been adjudicated guilty of or received a withheld judgment or suspended sentence for one (1) or more crimes of violence constituting a misdemeanor, unless three (3) years have elapsed since disposition or

pardon has occurred prior to the date on which the application is submitted;
(i) Has had entry of a withheld judgment for a criminal offense which would disqualify him from obtaining a concealed weapon license;
(j) Is an alien illegally in the United States;
(k) Is a person who having been a citizen of the United States has renounced his or her citizenship;
(*l*) Is under twenty-one (21) years of age;
(m) Is free on bond or personal recognizance pending trial, appeal or sentencing for a crime which would disqualify him from obtaining a concealed weapon license; or
(n) Is subject to a protection order issued under chapter 63, title 39, Idaho Code, that restrains the person from harassing, stalking or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.

The license application shall be in a form to be prescribed by the director of the Idaho state police, and shall ask the name, address, description and signature of the licensee, date of birth, place of birth, social security number, military status, citizenship and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The application shall indicate that provision of the social security number is optional. The license application shall contain a warning substantially as follows:

CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

The sheriff shall require any person who is applying for original issuance of a license to submit his fingerprints in addition to the other information required in this subsection. Within five (5) days after the filing of an application, the sheriff shall forward the application and fingerprints to the Idaho state police for a records check of state and national files. The Idaho state police shall conduct a national fingerprint-based records check and return the results to the sheriff within seventy-five (75) days. The sheriff shall not issue a license before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in paragraphs (a) through (n) of this subsection. In the event the sheriff has collected a fee to cover the cost of processing fingerprints for the records check, the sheriff shall provide the applicant with a copy of the results of the records check upon request of the applicant.

The license will be in a form substantially similar to that of the Idaho driver's license. It will bear the signature, name, address, date of birth, picture of the licensee, expiration date and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. Upon issuing a license under the provisions of

this section, the sheriff will notify the Idaho state police on a form or in a manner prescribed by the state police. Information relating to an applicant or licensee received or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 9-338, Idaho Code.

(2) The fee for original issuance of a license shall be twenty dollars ($20.00) paid to the sheriff for the purpose of enforcing the provisions of this chapter. The sheriff may collect any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state.

(3) The fee for renewal of the license shall be fifteen dollars ($15.00). The sheriff may collect any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state. If a licensee applying for renewal has not previously been required to submit fingerprints, the sheriff shall require the licensee to do so and may collect any additional fees necessary to cover the cost of processing fingerprints lawfully required by any state or federal agency or department.

(4) Every license that is not, as provided by law, suspended, revoked or disqualified in this state shall be renewable at any time during the ninety (90) day period before its expiration or within ninety (90) days after the expiration date. Renewal notices shall be mailed out ninety (90) days prior to the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete an application. The sheriff shall submit the application to the Idaho state police for a records check of state and national databases. The Idaho state police shall conduct the records check and return the results to the sheriff within thirty (30) days. The sheriff shall not issue a renewal before receiving the results of the records check and must deny a license if the applicant is disqualified under any of the criteria listed in subsection (1), paragraphs (a) through (n) of this section. A renewal license shall be valid for a period of five (5) years. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license shall pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee, except that any licensee serving on active duty in the armed forces of the United States during the renewal period shall not be required to pay a late renewal penalty upon renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license. After one hundred eighty-one (181) days, the licensee shall be required to submit an initial application for a license and to pay the fees prescribed in subsection (2) of this section. The renewal fee and any penalty shall be paid to the sheriff for the purpose of enforcing the provisions of this chapter. Upon renewing a license under the provisions of this section, the sheriff shall notify the Idaho state police within five (5) days on a form or in a manner prescribed.

(5) Notwithstanding the requirements of this section, the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section.

(6) A city, county or other political subdivision of this state shall not modify the requirements of this section, nor may a political subdivision ask the applicant to voluntarily submit any information not required in this section. A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action may be brought in the county in which the application was made or in Ada county at the discretion of the petitioner. Any person who prevails against a public agency in any action in the courts for a violation of subsections (1) through (5) of this section, shall be awarded costs, including reasonable attorney's fees incurred in connection with the legal action.

(7) Except in the person's place of abode or fixed place of business, or on property in which the person has any ownership or leasehold interest, a person shall not carry a concealed weapon without a license to carry a concealed weapon. For the purposes of this section, a concealed weapon means any dirk, dirk knife, bowie knife, dagger, pistol, revolver or any other deadly or dangerous weapon. The provisions of this section shall not apply to any lawfully possessed shotgun or rifle, any knife, cleaver or other instrument primarily used in the processing, preparation or eating of food, any knife with a blade four (4) inches or less or any lawfully possessed taser, stun gun or pepper spray.

(8) A county sheriff, deputy sheriff or county employee who issues a license to carry a concealed weapon under this section shall not incur any civil or criminal liability as the result of the performance of his duties under this section.

(9) While in any motor vehicle, inside the limits or confines of any city, a person shall not carry a concealed weapon on or about his person without a license to carry a concealed weapon. This shall not apply to any firearm located in plain view whether it is loaded or unloaded. A firearm may be concealed legally in a motor vehicle so long as the weapon is disassembled or unloaded.

(10) In implementing the provisions of this section on behalf of the state of Idaho, the sheriff shall make applications readily available at the office of the sheriff or at other public offices in his jurisdiction.

(11) The sheriff of a county may issue a license to carry a concealed weapon to those individuals between the ages of eighteen (18) and twenty-one (21) years who in the judgment of the sheriff warrant the issuance of the license to carry a concealed weapon. Such issuance shall be subject to limitations which the issuing authority deems appropriate. Licenses issued to individuals between the ages of eighteen (18) and twenty-one (21) years shall be easily distinguishable from regular licenses.

(12) The requirement to secure a license to carry a concealed weapon under this section shall not apply to the following persons:

(a) Officials of a county, city, state of Idaho, the United States, peace officers, guards of any jail, court appointed attendants or any officer of any express company on duty;

(b) Employees of the adjutant general and military division of the state where military membership is a condition of employment when on duty;

(c) Criminal investigators of the attorney general's office, criminal investigators of a prosecuting attorney's office, prosecutors and their deputies;

(d) Any person outside the limits of or confines of any city while engaged in lawful hunting, fishing, trapping or other lawful outdoor activity;

(e) Any publicly elected Idaho official;

(f) Retired peace officers or detention deputies with at least ten (10) years of service with the state or a political subdivision as a peace officer or detention deputy and who have been certified by the peace officer standards and training council;

(g) Any person who has a valid permit from a state or local law enforcement agency or court authorizing him to carry a concealed weapon. A permit issued in another state will only be considered valid if the permit is in the licensee's physical possession.

(13) When issuing a license pursuant to this section, the sheriff may require the applicant to demonstrate familiarity with a firearm and shall accept any of the following, provided the applicant may select whichever of the following applies:

(a) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state;

(b) Completion of any national rifle association firearms safety or training course or any national rifle association hunter education course;

(c) Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, community college, college, university, or private or public institution or organization or firearms training school, utilizing instructors certified by the national rifle association or the Idaho state police;

(d) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement agency;

(e) Presents evidence or equivalent experience with a firearm through participation in organized shooting competition or military service;

(f) Is licensed or has been licensed to carry a firearm in this state or a county or municipality, unless the license has been revoked for cause; or

(g) Completion of any firearms training or training or safety course or class conducted by a state certified or national rifle association certified firearms instructor.

(14) A person carrying a concealed weapon in violation of the provisions of this section shall be guilty of a misdemeanor.

(15) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to revoke a license subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, for any of the following reasons:

(a) Fraud or intentional misrepresentation in the obtaining of a license;

(b) Misuse of a license, including lending or giving a license to another person, duplicating a license or using a license with the intent to unlawfully cause harm to a person or property;

(c) The doing of an act or existence of a condition which would have been grounds for the denial of the license by the sheriff;

(d) The violation of any of the terms of this section; or

(e) The applicant is adjudicated guilty of or receives a withheld judgment for a crime which would have disqualified him from initially receiving a license.

(16) A person twenty-one (21) years of age or older issued a license to carry a concealed weapon is exempt from any requirement to undergo a records check at the time of purchase or transfer of a firearm from a federally licensed firearms dealer. However, a temporary emergency license issued under subsection (5) of this section shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(17) The attorney general is authorized to negotiate reciprocal agreements with other states related to the recognition of licenses to carry concealed weapons. The Idaho state police shall keep a copy and maintain a record of all such agreements, which shall be made available to the public.

(18) The provisions of this section are hereby declared to be severable and if any provision of this section or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this section.

History.

I.C., § 18-3302, as added by 1990, ch. 256, § 2, p. 732; am. 1991, ch. 213, § 1, p. 507; am. 1991, ch. 262, § 1, p. 647; am. 1994, ch. 431, § 1, p. 1392; am. 1995, ch. 356, § 1, p. 1201; am. 1996, ch. 392, § 1, p. 1316; am. 1998, ch. 90, § 8, p. 315; am. 2000, ch. 469, § 22, p. 1450; am. 2005, ch. 165, § 1, p. 501; am. 2006, ch. 114, § 1, p. 309; am. 2006, ch. 294, § 1, p. 906; am. 2010, ch. 97, § 1, p. 185; am. 2010, ch. 237, § 1, p. 613; am. 2013, ch. 225, § 1, p. 529; am. 2013, ch. 242, § 1, p. 570; am. 2013, ch. 346, § 1, p. 933.

STATUTORY NOTES

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 294, in the introductory paragraph of subsection (1), inserted "on behalf of the state of Idaho" and "For licenses issued before July 1, 2006, a license shall be valid" and added the third sentence; in subsection (2), deleted "four (4) year" preceding the first occurrence of "license"; in subsection (3), substituted "fifteen dollars" for "twelve dollars"; in subsection (4), rewrote the first sentence, which formerly read: "A licensee may renew a license if the licensee applies for renewal at any time before or within ninety (90) days after the expiration date of the license," added the second sentence, and near the middle, substituted "five (5) years" for "four (4) years", and inserted "ninety-one (91) days or more" in the next-to-the-last sentence; in subsection (7), inserted "or on property in which the person has any ownership or leasehold interest"; in subsection (9), deleted "or inside any mining, lumbering, logging or railroad camp" following "of any city," and substituted the first occurrence of "firearm" for "pistol or revolver"; in subsection (10), inserted "on behalf of the state of Idaho"; in subsection (12)(d), deleted "or outside any mining, lumbering, logging or railroad camp, located outside any city" following "of any city"; in subsection (13), inserted "and shall accept"; and in subsection (16), deleted "or a license renewal on or after July 1, 1995" following "concealed weapon."

The 2006 amendment, by ch. 114, inserted "or detention deputies" and "or detention deputy" in subsection (12)(f).

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 97, in the introductory paragraph in subsection (1), inserted "one (1) of the following applies"; and in the first sentence in the first undesignated paragraph following paragraph (1)(n), deleted "triplicate, in" following "application shall be

in" and inserted "place of birth" and "citizenship."

The 2010 amendment, by ch. 237, added the exception in the next-to-last sentence in subsection (4).

This section was amended by three 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 225, added "any knife, cleaver or other instrument primarily used in the processing, preparation or eating of food, any knife with a blade four (4) inches or less or any lawfully possessed taser, stun gun or pepper spray" at the end of subsection (7).

The 2013 amendment, by ch. 242, in subsection (4), substituted "to one hundred eighty (180) days" for "or more" two times in the ninth sentence, inserted the tenth sentence, substituted "renewal fee and any penalty" for "fee" in the next-to-last sentence, and added the last sentence.

The 2013 amendment, by ch. 346, added the last sentence to the next-to-last paragraph of paragraph (1)(n).

Effective Dates.

Section 2 of S.L. 2013, ch. 225 declared an emergency. Approved April 2, 2013.

RESEARCH REFERENCES

A.L.R. — Constitutionality of state statutes and local ordinances regulating concealed weapons. 33 A.L.R.6th 407.

Construction and application of United States supreme court holdings in *District of Columbia v. Heller,* 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *McDonald v. City of Chicago, Ill.,* 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) respecting second amendment right to keep and bear arms, to state or local laws regulating firearms or other weapons. 64 A.L.R.6th 131.

18-3302B. Carrying concealed weapons under the influence of alcohol or drugs. — (1) It shall be unlawful for any person to carry a concealed weapon on or about his person when intoxicated or under the influence of an intoxicating drink or drug. Any violation of the provisions of this section shall be a misdemeanor.

(2) In addition to any other penalty, any person who enters a plea of guilty, who is found guilty or who is convicted of a violation of subsection (1) of this section when such violation occurs on a college or university campus shall have any and all licenses issued pursuant to section 18-3302, 18-3302H or 18-3302K, Idaho Code, revoked for a period of three (3) years and such person shall be ineligible to obtain or renew any such license or use any other license recognized by this state for the same period.

History.

I.C., § 18-3302B, as added by 1990, ch. 256, § 3, p. 732; am. 2014, ch. 73, § 2, p. 189.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 73, added the subsection (1) designation and added subsection (2).

Legislative Intent.

Section 1 of S.L. 2014, ch. 1 provides: "Legislative Intent. The Legislature finds that uniform laws, regulations and policies regarding firearms and weapons on state college and university campuses are necessary for public safety. It is the intent of this Legislature to provide for the safety of students, faculty and staff of state colleges and universities to allow for the possession or carrying of firearms by certain licensed persons on state college and university campuses, with the exception of carrying within student dormitories and residence halls, and within public entertainment facilities, as defined."

18-3302D. Possessing weapons or firearms on school property.

RESEARCH REFERENCES

A.L.R. — Construction and application of United States supreme court holdings in *District of Columbia v. Heller,* 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) and *McDonald v. City of Chicago, Ill.,* 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) respecting second amendment right to keep and bear arms, to state or local laws regulating firearms or other weapons. 64 A.L.R.6th 131.

18-3302H. Carrying of concealed firearms by qualified retired law enforcement officers. — (1) A county sheriff shall issue a license to carry a concealed firearm to a qualified retired law enforcement officer provided that the provisions of this section are met.

(2) As used in this section:

(a) "Firearm" means a handgun and does not include:

(i) Any machine gun, as defined in 26 U.S.C. section 5845(b);

(ii) Any firearm silencer, as defined in 18 U.S.C. section 921; or

(iii) Any destructive device, as defined in 18 U.S.C. section 921.

(b) "Qualified retired law enforcement officer" means an individual who:

(i) Retired in good standing from service with a public agency as a law enforcement officer, provided that such retirement was for reasons other than mental instability;

(ii) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(iii) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of fifteen (15) years or more, or retired from service with such agency after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(iv) Has a nonforfeitable right to benefits under the retirement plan of the agency;

(v) During the most recent twelve (12) month period has met, at his own expense, the standards for training and qualification of this state, as required at the discretion of the sheriff under paragraph (d) of this subsection or the agency from which he retired for active law enforcement officers, to carry a concealed firearm;

(vi) Is not chronically under the influence of alcohol, or under the influence of another intoxicating or hallucinatory drug or substance in violation of any provision of federal or state law;

(vii) Is not prohibited by federal law from receiving a firearm;

(viii) Has a current and valid photographic identification issued by the agency from which the individual retired from service as a law enforcement officer;

(ix) Provides by his affidavit, in triplicate, sworn and signed by him under penalty of perjury, that he meets all of the conditions set forth in this subsection (2);

(x) Pays the fees charged by the sheriff pursuant to this section; and

(xi) Completes the original application or renewal application as provided by this section.

(c) "Retired in good standing" means that at the time of his retirement, he was not under investigation, or subject to discipline, for any violation of this state's law enforcement code of conduct.

(d) "Standards for training and qualification in this state" means that when issuing a license pursuant to this section, the sheriff may require the applicant to demonstrate familiarity with a firearm by any of the following methods, provided the sheriff may require an applicant to complete more than one (1) firearms safety or training course:

(i) Completion of any hunter education or hunter safety course approved by the department of fish and game or a similar agency of another state;

(ii) Completion of any national rifle association firearms safety or training course, or any national rifle association hunter education course;

(iii) Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, community college, college, university, or private or public institution or organization or firearms training school, utilizing instructors certified by the national rifle association or the Idaho state police;

(iv) Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement agency;

(v) Presentation of evidence of equivalent experience with a firearm through participation in organized shooting competitions or military service;

(vi) Completion of any firearms training or training or safety course or class conducted by a state certified or national rifle association certified firearms instructor; or

(vii) Any other firearms safety training that the sheriff may deem appropriate.

(3) The original and renewal license applications under this section shall be in triplicate, in a form to be prescribed by the director of the Idaho state police, and shall ask the name, address, description and signature of the licensee, date of birth, social security number, military status, identification of the law enforcement agency from which the applicant retired, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The application shall indicate that provision of the social security number is optional. In implementing the provisions of this section, the sheriff shall make applications readily available at the office of the sheriff or at other public offices in his jurisdiction.

(4) The fee for original issuance of a license under this section shall be twenty dollars ($20.00), paid to the sheriff. The sheriff may also collect any additional fees necessary to cover the cost of processing and the cost of materials for the license, which shall also be paid to the sheriff.

(5) An original or renewed license issued pursuant to this section shall be in a form substantially similar to that of the Idaho driver's license and shall be valid for a period of one (1) year. The license shall bear the signature, name, address, date of birth, picture of the licensee, expiration date, and the driver's license number or state identification card number of the licensee if used for identification in applying for the license, and shall state that the licensee is a qualified retired law enforcement officer. Upon issuing a license under the provisions of this section, the sheriff shall notify the Idaho state police on a form or in a manner prescribed by the director of the Idaho state police.

(6) A qualified retired law enforcement licensee under this section may renew his license if he applies for renewal at any time before or within ninety (90) days after the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete a renewal application pursuant to subsection (3) of this section and an affidavit pursuant to subsection (2) of this section. A renewed license shall take effect upon the expiration date of the prior license.

(7) The fee for renewal of the license, which must be paid on a yearly basis, shall be twelve dollars ($12.00), paid to the sheriff. The sheriff may also collect any additional fees necessary to cover the processing costs and the cost of materials for the license, which shall also be paid to the sheriff. A licensee renewing after the expiration date of the license shall pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee. The renewal penalty fee, if any, shall be paid to the sheriff.

(8) A current and valid photographic identification issued by the agency from which the individual retired from service as a law enforcement officer, together with a license issued by the sheriff pursuant to this section, shall serve as a license to carry a firearm for a qualified retired law enforcement officer under 18 U.S.C. section 926C.

(9) The sheriff of the county where the license was issued or the sheriff of the county where the person resides shall have the power to revoke a license issued under this section pursuant to the provisions of section 18-3302(15), Idaho Code.

(10) A county sheriff, deputy sheriff, or county employee who issues a license to carry a concealed weapon pursuant to this section shall not incur any civil or criminal liability as the result of the performance of his duties under this section.

(11) A city, county or other political subdivision of this state shall not modify the requirements of this section, nor shall a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A civil action may be brought to enjoin a wrongful refusal to issue a license or a wrongful modification of the requirements of this section. The civil action shall be brought in the county in which the application was made.

(13) In lieu of or in addition to qualification to carry a concealed firearm under this section, a retired law enforcement officer may apply for a license to carry concealed weapons under section 18-3302, Idaho Code.

(14) Information relating to an applicant or licensee received or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 9-338, Idaho Code.

History.
I.C., § 18-3302H, as added by 2005, ch. 128, § 1, p. 412; am. 2009, ch. 202, § 1, p. 650.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 202, added subsection (14).

18-3302I. Threatening violence on school grounds. —
(1)(a) Any person, including a student, who willfully threatens on school grounds by word or act to use a firearm or other deadly or dangerous weapon to do violence to any other person on school grounds is guilty of a misdemeanor.
(b) The threats prohibited by this section encompass only those statements or acts where the speaker or actor intends to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The prosecution is not required to prove that the defendant actually intended to carry out the threat.
(2) Definitions. As used in this section:
(a) "Deadly or dangerous weapon" means a weapon, device, instrument, material or substance that is used for, or is readily capable of, causing death or serious bodily injury;
(b) "Firearm" means any weapon, whether loaded or unloaded, from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, regardless of whether such weapon is operable;
(c) "On school grounds" means in, or on the property of, a public or private elementary or secondary school.

History.
I.C., § 18-3302I, as added by 2006, ch. 303, § 1, p. 936.

18-3302J. Preemption of firearms regulation. — (1) The legislature finds that uniform laws regulating firearms are necessary to protect the individual citizen's right to bear arms guaranteed by amendment 2 of the United States Constitution and section 11, article I of the constitution of the state of Idaho. It is the legislature's intent to wholly occupy the field of firearms regulation within this state.

(2) Except as expressly authorized by state statute, no county, city, agency, board or any other political subdivision of this state may adopt or enforce any law, rule, regulation, or ordinance which regulates in any manner the sale, acquisition, transfer, ownership, possession, transportation, carrying or storage of firearms or any element relating to firearms and components thereof, including ammunition.

(3) A county may adopt ordinances to regulate, restrict or prohibit the discharge of firearms within its boundaries. Ordinances adopted under this subsection may not apply to or affect:

(a) A person discharging a firearm in the lawful defense of person or persons or property;

(b) A person discharging a firearm in the course of lawful hunting;

(c) A landowner and guests of the landowner discharging a firearm, when the discharge will not endanger persons or property;

(d) A person lawfully discharging a firearm on a sport shooting range as defined in section 55-2604, Idaho Code; or

(e) A person discharging a firearm in the course of target shooting on public land if the discharge will not endanger persons or property.

(4) A city may adopt ordinances to regulate, restrict or prohibit the discharge of firearms within its boundaries. Ordinances adopted under this subsection may not apply to or affect:

(a) A person discharging a firearm in the lawful defense of person or persons or property; or

(b) A person lawfully discharging a firearm on a sport shooting range as defined in section 55-2604, Idaho Code.

(5) This section shall not be construed to affect:

(a) The authority of the department of fish and game to make rules or regulations concerning the management of any wildlife of this state, as set forth in section 36-104, Idaho Code; and

(b) The authority of counties and cities to regulate the location and construction of sport shooting ranges, subject to the limitations contained in chapter 26, title 55, Idaho Code.

(6) The provisions of this section are hereby declared to be severable. And if any provision is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this section.

History.

I.C., § 18-3302J, as added by 2008, ch. 304, § 2, p. 845; am. 2014, ch. 73, § 3, p. 189.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 73, deleted former subsection (5)(c), which read: "The authority of the board of regents of the university of Idaho, the boards of trustees of the state colleges and universities, the board of professional-technical education and the boards of trustees of each of the community colleges established under chapter 21, title 33, Idaho Code, to regulate in matters relating to firearms".

Legislative Intent.

Section 1 of S.L. 2014, ch. 1 provides: "Legislative Intent. The Legislature finds that uniform laws, regulations and policies regarding firearms and weapons on state college and university campuses are necessary for public safety. It is the intent of this Legislature to provide for the safety of students, faculty and staff of state colleges and universities to allow for the possession or carrying of firearms by certain licensed persons on state college and university campuses, with the exception of carrying within student dormitories and residence halls, and within public entertainment facilities, as defined."

Effective Dates.

Section 2 of S.L. 2008, ch. 304 declared an emergency. Approved March 28, 2008.

RESEARCH REFERENCES

Idaho Law Review. — Bullets and Books by Legislative Fiat: Why Academic Freedom and Public Policy Permit Higher Education Institutions to Say No to Guns, Shaundra K. Lewis. 48 Idaho L. Rev. 1 (2011).

18-3302K. Issuance of enhanced licenses to carry concealed weapons. — (1) The sheriff of a county shall, within ninety (90) days after the filing of an application by any person who is not disqualified from possessing or receiving a firearm under state or federal law and has otherwise complied with the requirements of this section for an enhanced license, issue an enhanced license to the person to carry a weapon concealed on his person. Licenses issued under this section shall be valid for five (5) years from the date of issue.

(2) A person may file an application with the sheriff of the county in which he resides or, if not an Idaho resident, with the sheriff of any county in Idaho. The license application shall be in a form to be prescribed by the director of the Idaho state police, and shall ask the name, address, description and signature of the licensee, date of birth, place of birth, social security number, military status, citizenship and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. If the applicant is not a U.S. citizen, the application shall also require any alien or admission number issued to the applicant by U.S. immigration and customs enforcement, or any successor agency. The application shall indicate that the provision of the social security number is optional. The sheriff shall make such applications readily available at the office of the sheriff or at other public offices in his jurisdiction. The license application shall contain a warning substantially as follows:

CAUTION: Federal law and state law on the possession of weapons and firearms differ. If you are prohibited by federal law from possessing a weapon or a firearm, you may be prosecuted in federal court. A state permit is not a defense to a federal prosecution.

(3) The sheriff shall require any person who is applying for original issuance of a license to submit his fingerprints in addition to the other information required in this section. Within five (5) days after the filing of an application, the sheriff shall forward the application and fingerprints to the Idaho state police. The Idaho state police shall conduct a national fingerprint-based records check, an inquiry through the national instant criminal background check system, and a check of any applicable state database, including a check for any mental health records that would disqualify a person from possessing a firearm under state or federal law, and shall return the results to the sheriff within seventy-five (75) days. If the applicant is not a U.S. citizen, an immigration alien query shall also be conducted through U.S. immigration and customs enforcement or any successor agency. The sheriff shall not issue a license before receiving and reviewing the results of the records check.

(4) The sheriff shall deny an enhanced license to carry a concealed weapon if the applicant is disqualified under any of the criteria listed in

section 18-3302(1)(a) through (n), Idaho Code, or does not meet all of the following qualifications:

(a) Has been a legal resident of the state of Idaho for at least six (6) consecutive months before filing an application under this section or holds a current license or permit to carry concealed firearms issued by his state of residence; and

(b) Has successfully completed within twelve (12) months immediately preceding filing an application, a qualifying handgun course as specified in this paragraph and taught by a certified instructor who is not prohibited from possessing firearms under state or federal law. A copy of the certificate of successful completion of the handgun course, in a form to be prescribed by the director of the Idaho state police and signed by the course instructor, shall be submitted to the sheriff at the time of filing an application under this section. Certified instructors of handgun courses when filing an application under this section shall not be required to submit such certificates but shall submit a copy of their current instructor's credential. The sheriff shall accept as a qualifying handgun course a personal protection course offered by the national rifle association or an equivalent course meeting the following requirements:

(i) The course instructor is certified by the national rifle association, or by another nationally recognized organization that customarily certifies firearms instructors, as an instructor in personal protection with handguns, or the course instructor is certified by the Idaho peace officers standards and training council as a firearms instructor;

(ii) The course is at least eight (8) hours in duration;

(iii) The course is taught face to face and not by electronic or other means; and

(iv) The course includes instruction in:

1. Idaho law relating to firearms and the use of deadly force, provided that such instruction is delivered by either of the following whose name and credential shall appear on the certificate:

(A) An active licensed member of the Idaho state bar; or

(B) A law enforcement officer who possesses an intermediate or higher Idaho peace officers standards and training certificate.

2. The basic concepts of the safe and responsible use of handguns;

3. Self-defense principles; and

4. Live fire training including the firing of at least ninety-eight (98) rounds by the student.

(5) The license will be in a form substantially similar to that of the Idaho driver's license. It will bear the signature, name, address, date of birth, picture of the licensee, expiration date and the driver's license number or state identification card number of the licensee if used for identification in applying for the license. The license shall be clearly distinguishable from a license issued pursuant to section 18-3302, Idaho Code, and shall be marked "Idaho enhanced concealed weapons license" on its face. Upon issuing a license under the provisions of this section, the sheriff shall notify the Idaho state police within three (3) days on a form or in a manner prescribed by the Idaho state police. Information relating to an applicant or licensee received

or maintained pursuant to this section by the sheriff or Idaho state police is confidential and exempt from disclosure under section 9-340B, Idaho Code.

(6) The fee for original issuance of a license shall be twenty dollars ($20.00), which the sheriff shall retain for the purpose of performing the duties required in this section. The sheriff may collect any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state.

(7) The fee for renewal of the enhanced license shall be fifteen dollars ($15.00), which the sheriff shall retain for the purpose of performing duties required in this section. The sheriff may collect any additional fees necessary to cover the processing costs lawfully required by any state or federal agency or department, and the cost of materials for the license lawfully required by any state agency or department, which costs shall be paid to the state.

(8) Every license that is not, as provided by law, suspended, revoked or disqualified in this state shall be renewable at any time during the ninety (90) day period before its expiration or within ninety (90) days after the expiration date. Renewal notices shall be mailed out ninety (90) days prior to the expiration date of the license. The sheriff shall require the licensee applying for renewal to complete an application. The sheriff shall submit the application to the Idaho state police. The Idaho state police shall conduct the same records checks as required for an initial license under subsection (3) of this section and shall return the results to the sheriff within thirty (30) days. The sheriff shall not issue a renewal before receiving and reviewing the results of the records check and must deny a license if the applicant is disqualified under any of the criteria provided in this section. A renewal license shall be valid for a period of five (5) years. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license shall pay a late renewal penalty of ten dollars ($10.00) in addition to the renewal fee, except that any licensee serving on active duty in the armed forces of the United States during the renewal period shall not be required to pay a late renewal penalty upon renewing ninety-one (91) days to one hundred eighty (180) days after the expiration date of the license. After one hundred eighty-one (181) days, the licensee shall be required to submit an initial application for an enhanced license and to pay the fees prescribed in subsection (6) of this section. The renewal fee and any penalty shall be paid to the sheriff for the purpose of enforcing the provisions of this chapter. Upon renewing a license under the provisions of this section, the sheriff shall notify the Idaho state police within five (5) days on a form or in a manner prescribed by the Idaho state police.

(9) The sheriff shall have the power to revoke a license issued pursuant to this section subsequent to a hearing in accordance with the provisions of chapter 52, title 67, Idaho Code, for any of the following reasons, provided that the sheriff shall notify the Idaho state police within three (3) days on a form or in a manner prescribed by the Idaho state police of any such revocation:

(a) Fraud or intentional misrepresentation in the obtaining of a license;

(b) Misuse of a license, including lending or giving a license to another person, duplicating a license or using a license with the intent to unlawfully cause harm to a person or property;

(c) The doing of an act or existence of a condition that would have been grounds for the denial of the license by the sheriff;

(d) The violation of any of the provisions of this section; or

(e) The applicant is adjudicated guilty of or receives a withheld judgment for a crime that would have disqualified him from initially receiving a license.

(10) An applicant who provides information on the application for an enhanced license to carry a concealed weapon knowing the same to be untrue shall be guilty of a misdemeanor.

(11) The attorney general shall contact the appropriate officials in other states for the purpose of establishing, to the extent possible, recognition and reciprocity of the enhanced license to carry a concealed weapon by other states, whether by formal agreement or otherwise.

(12) Any license issued pursuant to this section is valid throughout the state of Idaho and shall be considered an authorized state license.

(13) The Idaho state police shall maintain a computerized record system that is accessible to law enforcement agencies in any state for the purpose of verifying current enhanced licensee status. Information maintained in the record system shall be confidential and exempt from disclosure under section 9-340B, Idaho Code, except that any law enforcement officer or law enforcement agency, whether inside or outside the state of Idaho, may access the record system for the purpose of verifying current enhanced licensee status.

History.

I.C., § 18-3302K, as added by 2013, ch. 242, § 2, p. 570.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Idaho peace officer standards and training council, § 19-501.

Idaho state police, § 67-2901 et seq.

Compiler's Notes.

For more on the national instant criminal background check, see *http://www.fbi.gov/about-us/cjis/nics*.

For more on national rifle association, see *http://home.nra.org*.

Section 4 of S.L. 2013, ch. 242 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

18-3303. Exhibition or use of deadly weapon.

RESEARCH REFERENCES

A.L.R. — Cigarette lighter as deadly or dangerous weapon. 22 A.L.R.6th 533.

18-3304. Aiming firearms at others. — Any person who shall intentionally, without malice, point or aim any firearm at or toward any other person shall be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars ($1,000) and not less than five dollars ($5.00).

History.
I.C., § 18-3304, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 9, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$50.00."

18-3305. Discharge of arms aimed at another. — Any person who shall discharge, without injury to any person, any firearm, while intentionally, without malice, aimed at or toward any person, shall be guilty of a misdemeanor, and shall be liable to a fine of not more than one thousand dollars ($1,000), or imprisonment in the county jail not to exceed six (6) months, or both, at the discretion of the court.

History.
I.C., § 18-3305, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 10, p. 216; am. 2007, ch. 7, § 1, p. 7.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$100.00."

The 2007 amendment, by ch. 7, substituted "more than" for "less than" preceding "one thousand dollars ($1,000)."

18-3306. Injuring another by discharge of aimed firearms. — Any person who shall maim or injure any other person by the discharge of any firearm pointed or aimed, intentionally but without malice, at any such person, shall be guilty of a misdemeanor, and shall be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000), or imprisonment in the county jail for a period of not more than one (1) year; and if death ensue from such wounding or maiming, such person so offending shall be deemed guilty of the crime of manslaughter.

History.
I.C., § 18-3306, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 11, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "fifty dollars ($50.00) nor more than one thousand dollars ($1,000)" for "$50.00."

18-3309. Authority of governing boards of public colleges and universities regarding firearms. — (1) The board of regents of the university of Idaho, the boards of trustees of the state colleges and

universities, the board of professional-technical education and the boards of trustees of each of the community colleges established under chapter 21, title 33, Idaho Code, hereby have the authority to prescribe rules and regulations relating to firearms.

(2) Notwithstanding any other provision of state law, this authority shall not extend to regulating or prohibiting the otherwise lawful possession, carrying or transporting of firearms or ammunition by persons licensed under section 18-3302H or 18-3302K, Idaho Code.

(a) However, a person issued a license under the provisions of section 18-3302H or 18-3302K, Idaho Code, shall not carry a concealed weapon:

(i) Within a student dormitory or residence hall; or

(ii) Within any building of a public entertainment facility, provided that proper signage is conspicuously posted at each point of public ingress to the facility notifying attendees of any restriction on the possession of firearms in the facility during the game or event.

(b) As used in this section:

(i) "Public entertainment facility" means an arena, stadium, amphitheater, auditorium, theater or similar facility with a seating capacity of at least one thousand (1,000) persons that is owned or operated by the board of regents of the university of Idaho, a board of trustees of a state college or university, the state board of professional-technical education or a board of trustees of a community college established under chapter 21, title 33, Idaho Code, that is primarily designed and used for artistic, theatrical, cultural, charitable, musical, sporting or entertainment events, but does not include publicly accessible outdoor grounds or rights-of-way appurtenant to the facility, including parking lots within the facility used for the parking of motor vehicles.

(ii) "Student dormitory or residence hall" means a building owned or operated by the board of regents of the university of Idaho, a board of trustees of a state college or university, the state board of professional-technical education or a board of trustees of a community college established under chapter 21, title 33, Idaho Code, located on or within the campus area owned by the university or college to house persons residing on campus as students, but does not include off-campus housing or publicly accessible outdoor grounds or rights-of-way appurtenant to the building, including parking lots within the building used for the parking of motor vehicles.

(c) The provisions of subsection (2)(a) shall not apply to the following persons:

(i) A person or persons complying with the provisions of section 19-202A, Idaho Code.

(ii) A person or an employee who is authorized to carry a firearm by the university or college board of trustees, board of regents, governing board or a person or entity with authority over the building or facility.

(iii) A person who possesses a firearm for authorized use in an approved program, event, activity or other circumstance approved by a person or entity with authority over the building or facility.

(iv) A person who possesses a firearm in a private vehicle while

delivering students, employees or other persons to and from a university, college or public entertainment facility.

(v) An on-duty or off-duty certified peace officer.

(3) Any rule, regulation or policy that is contrary to this section is null and void.

History.
I.C., § 18-3309, as added by 2014, ch. 73, § 4, p. 189.

STATUTORY NOTES

Prior Laws.
Former § 18-3309, Selling firearms or ammunition to Indians, which comprised 1879, p. 31; R.S., R.C., & C.L., § 6930; C.S., § 8356; I.C.A., § 17-2725, was repealed by S.L. 1949, ch. 10, § 1, was repealed by S.L. 1949, ch. 10, § 1.

Legislative Intent.
Section 1 of S.L. 2014, ch. 1 provides: "Legislative Intent. The Legislature finds that uniform laws, regulations and policies regarding firearms and weapons on state college and university campuses are necessary for public safety. It is the intent of this Legislature to provide for the safety of students, faculty and staff of state colleges and universities to allow for the possession or carrying of firearms by certain licensed persons on state college and university campuses, with the exception of carrying within student dormitories and residence halls, and within public entertainment facilities, as defined."

18-3312. Injuring another by careless handling and discharge of firearms. — Any person who handles, uses or operates any firearm in a careless, reckless or negligent manner, or without due caution and circumspection, whereby the same is fired or discharged and maims, wounds or injures any other person or persons, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History.
I.C., § 18-3312, as added by 1972, ch. 336, § 1, p. 844; am. 2005, ch. 359, § 6, p. 1133.

18-3313. False reports of explosives in public or private places a felony — Penalty. — Any person who reports to any police officer, sheriff, employee of a police department or sheriff's office, employee of a 911 emergency communications system or emergency vehicle dispatch center, employee of a fire department or fire service, prosecuting attorney, newspaper, radio station, television station, deputy sheriff, deputy prosecuting attorney, member of the state police, employee of an airline, employee of an airport, employee of a railroad or bus line, an employee of a telephone company, occupants of a building, employee of a school district, or a news reporter in the employ of a newspaper or radio or television station, that a bomb or other explosive has been placed or secreted in a public or private place knowing that such report is false, is guilty of a felony, and upon conviction thereof, shall be sentenced to a term of not to exceed five (5) years in the state penitentiary.

History.
I.C., § 18-3313, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 46, § 1, p. 135.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 46, inserted "employee of a police department or sheriff's office, employee of a 911 emergency communications system or emergency vehicle dispatch center" near the beginning of the section.

18-3314. Resident's purchase of firearm out-of-state. — Residents of the state of Idaho may purchase rifles and shotguns in a state other than Idaho, provided that such residents conform to the applicable provisions of the federal gun control act of 1968, and regulations thereunder, and provided further, that such residents conform to the provisions of law applicable to such a purchase in Idaho and in the state in which the purchase is made.

History.
I.C., § 18-3314, as added by 1972, ch. 336, § 1, p. 844; am. 2009, ch. 110, § 1, p. 363.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 110, rewrote the section heading which formerly read: "Resident's purchase of firearm in contiguous state", substituted "other than Idaho" for "contiguous to Idaho", deleted "as administered by the United States secretary of the treasury" following "and regulations thereunder", and deleted "contiguous" preceding "state" near the end of the section.

Federal References.
The federal gun control act of 1968, referred to in this section, is compiled in 18 U.S.C.S. § 921 et seq.

RESEARCH REFERENCES

A.L.R. — Preemption of state regulation of weapons and other laws by federal Gun Control Act. 65 A.L.R.6th 329.

18-3315. Nonresident — Purchase of firearm in Idaho. — Residents of a state other than the state of Idaho may purchase rifles and shotguns in Idaho, provided that such residents conform to the applicable provisions of the federal gun control act of 1968, and regulations thereunder, and provided further, that such residents conform to the provisions of law applicable to such purchase in Idaho and in the state in which such persons reside.

History.
I.C., § 18-3315, as added by 1972, ch. 336, § 1, p. 844; am. 2009, ch. 110, § 2, p. 363.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 110, rewrote the section heading which formerly read: "Resident of contiguous state — Purchase of firearm in Idaho", substituted "other than the state of Idaho" for "contiguous to the state of Idaho" and deleted "as administered by the United States secretary of the treasury" following "and regulations thereunder".

Federal References.

The federal gun control act of 1968, referred to in this section, is compiled at 18 U.S.C.S. § 921 et seq.

RESEARCH REFERENCES

A.L.R. — Preemption of state regulation of weapons and other laws by federal Gun Control Act. 65 A.L.R.6th 329.

18-3315A. Prohibition of federal regulation of certain firearms. — (1) As used in this section:

(a) "Borders of Idaho" means the boundaries of Idaho described in chapter 1, title 31, Idaho Code.

(b) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm including, but not limited to, telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition, ammunition carriers and lights for target illumination.

(c) "Generic and insignificant parts" includes, but is not limited to, springs, screws, nuts and pins.

(d) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been created from basic materials for functional usefulness including, but not limited to, forging, casting, machining or other processes for working materials.

(2) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Idaho and that remains within the borders of Idaho is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory or ammunition that is manufactured in Idaho from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state.

(3) It is declared by the legislature that generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories or ammunition, and their importation into Idaho and incorporation into a firearm, a firearm accessory or ammunition manufactured in Idaho does not subject the firearm, firearm accessory or ammunition to federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories and ammunition under interstate commerce as if they were actually firearms, firearms accessories

or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories and ammunition made in Idaho from those materials. Firearms accessories that are imported into Idaho from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Idaho.

(4) Subsections (2) and (3) of this section do not apply to:

(a) A firearm that cannot be carried and used by one (1) person;

(b) A firearm that has a bore diameter greater than one and one-half (1 1/2) inches and that uses smokeless powder, not black powder, as a propellant;

(c) Ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or

(d) A firearm that discharges two (2) or more rounds of ammunition with one (1) activation of the trigger or other firing device.

(5) A firearm manufactured or sold in Idaho under this section shall have the words "Made in Idaho" clearly stamped on a central metallic part, such as the receiver or frame.

(6) This section applies to firearms, firearms accessories and ammunition that are manufactured as defined in subsection (1) and retained in Idaho after October 1, 2010.

History.

I.C., § 18-3315A, as added by 2010, ch. 244, § 3, p. 628.

STATUTORY NOTES

Legislative Intent.

Section 2 of S.L. 2010, ch. 244 provided: "Legislative Intent. The Legislature declares that the authority for this act is the following:

"(1) The Tenth Amendment to the United States Constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the Constitution and reserves to the state and people of Idaho certain powers as they were understood at the time that Idaho was admitted to statehood in 1890. The guaranty of those powers is a matter of contract between the state and people of Idaho and the United States as of the time that the compact with the United States was agreed upon and adopted by Idaho and the United States in 1890.

"The Ninth Amendment to the United States Constitution guarantees to the people rights not granted in the Constitution and reserves to the people of Idaho certain rights as they were understood at the time that Idaho was admitted to statehood in 1890. The guaranty of those rights is a matter of contract between the state and people of Idaho and the United States as of the time that the compact with the United States was agreed upon and adopted by Idaho and the United States in 1890.

"(3) The regulation of intrastate commerce is vested in the states under the Ninth and Tenth Amendments to the United States Constitution, particularly if not expressly preempted by federal law. Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories, and ammunition.

"(4) The Second Amendment to the United States Constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Idaho was admitted to statehood in 1890, and the guaranty of the right is a matter of contract between the state and people of Idaho and the United States as of the time that the compact with the United States was agreed upon and adopted by Idaho and the United States in 1890.

"(5) Section 11, Article I, of the Constitution of the State of Idaho clearly secures to Idaho citizens, and prohibits government interference with, the right of individual Idaho citizens to keep and bear arms. This constitutional protection in the Idaho Constitution,

which was approved by Congress and the people of Idaho, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Idaho and the United States in 1890.

"(6) In 2009, the Idaho Legislature adopted House Joint Memorial No. 4, which stated findings of the Legislature claiming sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution.

"(7) In enacting this law, the Idaho legislators are declaring their intention of Idaho becoming the freest state in the Union."

Compiler's Notes.

Section 1 of S.L. 2010, ch. 244 provided: "Short Title. This act may be cited as the 'Idaho Firearms Freedom Act.'"

Section 4 of S.L. 2010, ch. 244 provided: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

18-3315B. Prohibition of regulation of certain firearms. — (1) Other than compliance with an order of the court, any official, agent or employee of the state of Idaho or a political subdivision thereof who knowingly and willfully orders an official, agent or employee of the state of Idaho or a political subdivision of the state to enforce any executive order, agency order, law, rule or regulation of the United States government as provided in subsection (2) of this section upon a personal firearm, a firearm accessory or ammunition shall, on a first violation, be liable for a civil penalty not to exceed one thousand dollars ($1,000) which shall be paid into the general fund of the state, and on a second or subsequent violation shall be guilty of a misdemeanor. If a public officer or person commits a violation of section 18-315 or section 18-703, Idaho Code, the public officer or person shall be punished as provided in those sections. Nothing in this section shall be construed to affect the law of search and seizure as set forth in section 17, article I of the constitution of the state of Idaho or as set forth in the fourth, fifth and fourteenth amendments to the United States constitution. Notwithstanding anything to the contrary contained elsewhere in this act, no private cause of action exists under this section.

(2) No federal executive order, agency order, law, statute, rule or regulation issued, enacted or promulgated on or after the effective date of this act, shall be knowingly and willfully ordered to be enforced by any official, agent or employee of the state or a political subdivision of the state if contrary to the provisions of section 11, article I, of the constitution of the state of Idaho.

(3) "Enforcement" shall not be construed to include the performance of any act solely for the purpose of facilitating the transfer of firearms under federal law. Any order of enforcement not excluded by the provisions of this subsection that occurs on and after the effective date of this act shall be and is a breach of the oath of office of the official, agent or employee of the state or a political subdivision of the state.

History.

I.C., § 18-3315B, as added by 2014, ch. 148, § 3, p. 411.

STATUTORY NOTES

Legislative Intent.

Section 2 of S.L. 2014, ch 148 provided: "Legislative Intent. It is the intent of the Legislature in enacting this act to protect

Idaho law enforcement officers from being directed, through federal executive orders, agency orders, statutes, laws, rules, or regulations enacted or promulgated on or after the effective date of this act, to violate their oath of office and Idaho citizens' rights under Section 11, Article I, of the Constitution of the State of Idaho. This Idaho constitutional provision disallows confiscation of firearms except those actually used in the commission of a felony, and disallows other restrictions on a citizen's lawful right to own firearms and ammunition. This act provides that no Idaho law enforcement official shall knowingly and willingly order an action that is contrary to the provisions of Section 11, Article I, of the Constitution of the State of Idaho. The Legislature does not intend to affect an Idaho law enforcement officer who assists federal agents on drug or gang enforcement activities. The Legislature intends to create a penalty for an official, agent or employee of the State of Idaho or a political subdivision thereof that orders an unlawful confiscation without penalizing officers that follow orders. Idaho law enforcement officers are partners with Idaho citizens in protecting the rights as outlined in both the United States Constitution and the Constitution of the State of Idaho."

Compiler's Notes.

The phrase "the effective date of this act" in subsection (3) refers to the effective date of S.L. 2014, Chapter 148, which was effective March 19, 2014.

Section 1 of S.L. 2014, ch. 148 provided: "This act shall be known and may be cited as the "Idaho Federal Firearm, Magazine and Register Ban Enforcement Act."

Section 4 of S.L. 2014, ch. 148 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 5 of S.L. 2014, ch. 148 declared an emergency. Approved March 19, 2014.

18-3316. Unlawful possession of a firearm.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Conviction.
Evidence.
Information.
Search and seizure.
Sufficient evidence.

Constitutionality.

Application for post-conviction relief was properly dismissed because defendant's counsel was not ineffective for failing to argue that this section was unconstitutional as a bill of attainder and as an ex post facto law. Counsel was not required to raise a nonmeritorious issue in the district court. Zivkovic v. State, 150 Idaho 783, 251 P.3d 611 (Ct. App.), cert. denied, — U.S. —, 132 S. Ct. 555, 181 L. Ed. 2d 401 (2011).

Conviction.

For the purposes of subsection (2), a guilty plea alone, in the absence of a final judgment or sentence, qualifies as a conviction. State v. Cook, 143 Idaho 323, 144 P.3d 28 (Ct. App. 2006).

The defendant entered a conditional guilty plea to unlawful possession of a firearm, but the trial court erred when it denied defendant's motion to dismiss, because, under a proper interpretation of Idaho statutes, defendant's possession of a firearm was not illegal. Because his out-of-state convictions for drug offenses were committed prior to 1991, § 18-310 automatically restored defendant's right to bear arms when he completed his probation for the predicate felonies. State v. Boren, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 27 (Ct. App. Mar. 14, 2013).

Evidence.

Evidence was sufficient to convict defendant of possession of a weapon by a felon under subsection (2) because pleading guilty to a felony was a "conviction" for purposes of the statute, and, further, the trial court properly took judicial notice of defendant's guilty plea under Idaho R. Evid. 201(d). State v. Cook, 143 Idaho 323, 144 P.3d 28 (Ct. App. 2006).

Information.

Where the information charging defendant with purchase of firearm by a felon listed the territorial jurisdiction of Idaho and cited to the applicable statute defendant was charged

under, it was sufficient for the district court to imply the necessary allegations against defendant, and, further, the inclusion of "purchase" implied a knowing act under § 18-114. State v. Cook, 143 Idaho 323, 144 P.3d 28 (Ct. App. 2006).

Search and Seizure.

In a criminal prosecution of a felon in possession of a firearm, the trial court properly found that the deputy violated the scope of a Fourth Amendment *Terry* stop when he used a drug dog to search defendant's truck during a routine traffic stop. The trial court properly granted defendant's motion to suppress the semi-automatic handgun found in the cab of his truck. State v. Aguirre, 141 Idaho 560, 112 P.3d 848 (Ct. App. 2005).

Sufficient Evidence.

Defendant's belief that he could lawfully hunt with a muzzle loader because when he was previously charged with unlawful possession of a firearm, law enforcement officials who confiscated the other rifles and guns from his home did not take the muzzle loader, did not yield facts establishing the defense of misfortune or accident. The fact that defendant knowingly possessed the muzzle loader, regardless of his good intention, was all that was necessary to sustain a conviction. State v. Dolsby, 143 Idaho 352, 145 P.3d 917 (Ct. App. 2006).

18-3317. Unlawful discharge of a firearm at a dwelling house, occupied building, vehicle or mobile home. — It shall be unlawful for any person to intentionally and unlawfully discharge a firearm at an inhabited dwelling house, occupied building, occupied motor vehicle, inhabited mobile home, inhabited travel trailer, or inhabited camper. Any person violating the provisions of this section shall be guilty of a felony, punishable by imprisonment in the state prison for a term not to exceed fifteen (15) years.

As used in this section, "inhabited" means currently being used for dwelling purposes, whether occupied or not.

History.

I.C., § 18-3317, as added by 1993, ch. 254, § 1, p. 879; am. 2007, ch. 42, § 1, p. 104.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 42, added "punishable by imprisonment in the state prison for a term not to exceed fifteen (15) years" in the first paragraph.

18-3318. Definitions. — Definitions as used in sections 18-3319, 18-3319A, 18-3320, 18-3320A and 18-3321, Idaho Code:

(1) "Bomb" means any chemical or mixture of chemicals contained in such a manner that it can be made to explode with fire or force, and combined with the method or mechanism intended to cause its explosion. The term includes components of a bomb only when the individual charged has taken steps to place the components in proximity to each other, or has partially assembled components from which a completed bomb can be readily assembled. "Bomb" does not include: rifle, pistol or shotgun ammunition and their components; fireworks; boating, railroad and other safety flares or propellants used in model rockets or similar hobby activities.

(2) "Destructive device" means:

(a) Any explosive, incendiary or poisonous gas:

(i) Bomb;

(ii) Grenade;

(iii) Rocket having a propellant charge of more than four (4) ounces;

(iv) Missile having an explosive or incendiary charge of more than one-fourth (1/4) ounce;

(v) Mine;

(vi) Similar device.

(b) Any type of weapon, by whatever name known, which will, or which may be imminently converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than .700 inches in diameter, except rifled and unrifled shotguns or shotgun shells.

(c) Components of a destructive device only when the individual charged has taken steps to place the components in proximity to each other, or has partially assembled components from which a completed destructive device can be readily assembled.

(d) The term "destructive device" shall not include:

(i) Any device which is neither designed nor redesigned for use as a weapon;

(ii) Any device which, although originally designed for use as a weapon, has been redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

(iii) Otherwise lawfully owned surplus military ordnance;

(iv) Antiques or reproductions thereof and rifles held for sporting, recreational, investment or display purposes;

(v) Rifle, pistol or shotgun ammunition and their components.

(3) "Hoax destructive device" means any object that:

(a) Under the circumstances, reasonably appears to be a destructive device as defined in subsection (2) of this section, but is an inoperative imitation of a destructive device; or

(b) Is proclaimed to contain a destructive device as defined in subsection (2) of this section, but does not in fact contain a destructive device.

(4) "Shrapnel" means any metal, ceramic, glass, hard plastic or other material of sufficient hardness to puncture human skin when propelled by force of the bomb or destructive device to which it is attached or in which it is contained.

History.

I.C., § 18-3318, as added by 1997, ch. 272, § 1, p. 796; am. 2001, ch. 256, § 1, p. 922; am. 2010, ch. 261, § 1, p. 662.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 261, in the introductory language, inserted "18-3319A" and "18-3320A"; and added subsection (3), redesignating former subsection (3) as subsection (4).

18-3319A. Unlawful acts — Hoax destructive device. — (1) A person is guilty of a felony if such person intentionally causes a reasonable person to be in fear of serious bodily injury or death by:

(a) Possessing, manufacturing, selling, giving, mailing, sending or causing to be sent to another person a hoax destructive device; or

(b) Placing or causing to be placed a hoax destructive device at any location; or

(c) Conspiring to use, using or causing to be used a hoax destructive device in the commission of or an attempt to commit a felony.

(2) A violation of the provisions of paragraph (a) or (b) of subsection (1) of this section is punishable by imprisonment in the state prison not to exceed five (5) years.

(3) A violation of the provisions of paragraph (c) of subsection (1) of this section is punishable by imprisonment in the state prison not to exceed fifteen (15) years and by a fine not exceeding fifteen thousand dollars ($15,000).

History.
I.C., § 18-3319A, as added by 2010, ch. 261, § 2, p. 662.

18-3325. Prohibition — Possession — Use of conducted energy device — Penalties. — (1) It shall be a misdemeanor to possess a conducted energy device by:

(a) Any person found guilty of a felony who is not finally discharged from a sentence of imprisonment, probation or parole; or

(b) Any person who, having been found guilty of a felony, has not had his or her civil right to ship, transport, possess or receive a firearm restored.

(2) Use of a conducted energy device during the commission of a felony offense shall constitute a separate felony offense.

(3) Use of a conducted energy device during the commission of any of the following misdemeanor crimes of violence: sections 18-901, 18-903, 18-917 or 18-918, Idaho Code, shall result in double the penalties provided for in Idaho Code regarding those crimes.

(4) A sentence imposed for a violation of the provisions of this section shall be imposed separate from and consecutive to the sentence for any offense based on the act establishing the offense under this section.

(5) For purposes of this section, "conducted energy device" means any item that emits an electrical current, impulse, wave or beam, which current, impulse, wave or beam is designed to incapacitate, injure or kill.

History.
I.C., § 18-3325, as added by 2008, ch. 333, § 1, p. 918.

CHAPTER 34

FLAGS AND EMBLEMS

18-3401. Public mutilation of flag.

RESEARCH REFERENCES

A.L.R. — Validity, and standing to challenge validity, of state statute prohibiting flag desecration and misuse. 31 A.L.R.6th 333.

CHAPTER 36
FORGERY AND COUNTERFEITING

SECTION.
18-3613. Simulation of switch and car keys.

18-3601. Forgery defined.

JUDICIAL DECISIONS

ANALYSIS

Elements of forgery.
Evidence.

Elements of Forgery.
Defendant's action of presenting a fraudulent check for payment at a check-cashing business was sufficient to find that defendant passed the check in contravention of this section. Correct interpretation of the forgery statute did not require defendant to have indorsed the check. State v. Allen, 148 Idaho 578, 225 P.3d 1173 (Ct. App. 2009).

Evidence.
Defendant was properly convicted of forgery for cashing a deceased person's social security check where an accomplice testified as to defendant's participation in the crime. State v. Hill, 140 Idaho 625, 97 P.3d 1014 (Ct. App. 2004).

Cited in: State v. Mendoza, 151 Idaho 623, 262 P.3d 266 (Ct. App. 2011); State v. Justice, 152 Idaho 48, 266 P.3d 1153 (Ct. App. 2011).

RESEARCH REFERENCES

A.L.R. — Signing credit charge, credit sales slip, or credit electronic point of sale terminal, as forgery. 80 A.L.R.6th 599.

18-3605. Possession of forged notes or bank bills or check or checks.

RESEARCH REFERENCES

A.L.R. — Signing credit charge, credit sales slip, or credit electronic point of sale terminal, as forgery. 80 A.L.R.6th 599.

18-3613. Simulation of switch and car keys. — It shall be unlawful for any person by himself or another, without the written order or consent of such common carrier, to make, simulate, sell or dispose of any key belonging to or which might be used to open or unlock any switch, lock, car lock, or locks, used upon or belonging to any switch or car of any kind owned, controlled or operated by any common carrier in this state. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or by imprisonment in the county jail not less than thirty (30) days nor more than six (6) months.

History.
I.C., § 18-3613, as added by 1972, ch. 336, § 1, p. 844; am. 2005, ch. 359, § 7, p. 1133.

18-3615. Sale of counterfeit goods.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state trademark counterfeiting statutes. 63 A.L.R.6th 303.

18-3616. Forged and counterfeit trade-marks defined.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state trademark counterfeiting statutes. 63 A.L.R.6th 303.

CHAPTER 38

GAMING

SECTION.
18-3808. Officers to enforce law. [Repealed.]
18-3809. Bookmaking and pool selling.
SECTION.
18-3810. Slot machines — Possession unlawful — Exception.

18-3801. Gambling defined.

RESEARCH REFERENCES

A.L.R. — Preemption of state law by Indian Gaming Regulatory Act. 27 A.L.R. Fed. 2d 93.

18-3808. Officers to enforce law. [Repealed.]

Repealed by S.L. 2010, ch. 30, § 1.

History.
I.C., § 18-3808, as added by 1972, ch. 336, § 1, p. 844, effective July 1, 2010.

18-3809. Bookmaking and pool selling. — Any person who for gain, hire or profit engages in pool selling or bookmaking at any time or place within this state; or any person who keeps or occupies any room, shed, tenement, tent, booth or building, float or vessel, or any part thereof, or who occupies any place or stand of any kind, upon any public or private grounds within this state, with books, papers, paraphernalia, or mechanical device, for the purpose of engaging in pool selling or bookmaking, or recording or registering bets or wagers; or who sells pools or makes books upon the result of any trial or contest of skill, speed or power of endurance of man or beast for gain, hire or reward; or any person who, for gain, hire or reward, receives, registers, records and forwards to any other place, within or

without this state, any money, consideration or thing of value for the purpose of having it there bet or wagered by or for any person, who at such place sells pools or makes books upon any such event, or any person who, being the owner, lessee or occupant of any such room, shed, tenement, tent, booth or building, float or vessel, or part thereof, or any grounds within this state, knowingly and willfully permits the same to be occupied and used for any of the purposes aforesaid, unless unable to legally prevent the same; or any person who aids, assists or abets in any manner in any of said acts which are hereby forbidden, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment.

History.
I.C., § 18-3809, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 12, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$300" near the end of the section.

18-3810. Slot machines — Possession unlawful — Exception. — (1) Except as otherwise provided in this section, it shall be a misdemeanor for any person to use, possess, operate, keep, sell, or maintain for use or operation or otherwise, anywhere within the state of Idaho, any slot machine of any sort or kind whatsoever.

(2) The provisions of section 18-3804, Idaho Code, shall not apply to antique slot machines. For the purpose of this section, an antique slot machine is a slot machine manufactured prior to 1950, the operation of which is exclusively mechanical in nature and is not aided in whole or in part by any electronic means.

(3) Antique slot machines may be sold, possessed or located for purposes of display only and not for operation.

(4) An antique slot machine may not be operated for any purpose.

History.
I.C., § 18-3810, as added by 1986, ch. 8, § 2, p. 48; am. 2006, ch. 71, § 13, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, deleted "and punishable as provided in section 18-3801, Idaho Code," following "misdemeanor" in subsection (1).

JUDICIAL DECISIONS

Illegal Devices.
To give effect to Idaho Const., Art. III, § 20(2), which prohibits, in part, electromechanical imitation or simulation of any form of casino gambling, the Idaho legislature enacted this section to make it a misdemeanor to use or keep a slot machine. The term "slot machine" is sufficiently clear to include video gaming machines. Knox v. United States DOL, 759 F. Supp. 2d 1223 (D. Idaho 2010).

CHAPTER 39
HIGHWAYS AND BRIDGES

18-3906. Placing debris on highways.

JUDICIAL DECISIONS

ANALYSIS

Manure.
Negligence.

Manure.

Mixture of cow manure and urine comes under the purview of this section. State v. Tams, 149 Idaho 752, 240 P.3d 939 (Ct. App. 2010).

Negligence.

Although a police officer observed a mixture of manure, urine, and water spill from a cattle trailer onto the roadway, the district court properly vacated defendant's conviction for placing debris on a highway, where the evidence presented at trial was contrary to the magistrate's finding that defendant acted negligently. State v. Tams, 149 Idaho 752, 240 P.3d 939 (Ct. App. 2010).

CHAPTER 40
HOMICIDE

SECTION.
18-4004A. Notice of intent to seek death penalty.
18-4006. Manslaughter defined.
18-4007. Punishment for manslaughter.
18-4017. Causing a suicide — Assisting in a suicide — Injunctive relief — Revocation of license — Exceptions.

18-4001. Murder defined.

JUDICIAL DECISIONS

ANALYSIS

Elements of offense.
Evidence.
—Sufficiency of.
Instructions to jury.
Malice.
Sentence.

Elements of Offense.

In homicide cases, the corpus delicti consists of two elements: the death of the individual named in the charge as being dead; and (2) the death was caused by a criminal act of the defendant. These two elements may be satisfied based solely on circumstantial evidence. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Evidence.

—Sufficiency of.

Evidence was sufficient to support defendant's first-degree murder conviction for the killing of his wife. Although the victim's cause of death was ultimately listed as undetermined, the medical examiner testified that he listed the cause of death as undetermined due to the fact that the evidence supported alternative causes of death; drug overdose, suffocation, or a combination of the two. While the victim had lethal levels of Unisom and toxic levels of Ambien in her system, there was also evidence that the victim was suffocated; specifically, bruises and abrasions on the victim's face and cuts on the inside of her lip. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Although there was no direct evidence that defendant killed his wife, there was substantial circumstantial evidence for the jury to

conclude beyond a reasonable doubt that defendant was the person who suffocated or overdosed the victim; the evidence produced at trial revealed that it was unlikely that the victim's overdose was self-imposed, but there was substantial evidence linking defendant to her murder. The evidence revealed that defendant had a motive to murder his wife, was preparing people for her death, recently tried to poison her, tried to conceal the circumstances surrounding her death, and had the opportunity and the means to kill her. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Instructions to Jury.

Instruction stating that the shooter must have willfully, unlawfully, deliberately, and with malice aforethought and premeditation killed the victims embodied the articulation of criminal intent under the applicable law. State v. Reid, 151 Idaho 80, 253 P.3d 754 (Ct. App. 2011).

Where a third party grabbed defendant's gun during a kidnapping and shot the victim, the district court committed reversible error by relying on the proximate-cause theory — rather than the agency theory — when instructing the jury on felony murder under this section and subsection (d) of § 18-4003; the instruction allowed the jury to find defendant liable for any killing that occurred contemporaneously with the kidnapping without regard to whether defendant and the shooter were engaged in a common scheme or plan to kidnap the victim. Idaho's felony-murder statute must be viewed through the lens of the English common law under § 73-116, which was that the felony-murder rule applied only to co-conspirators acting in concert in furtherance of the common plan or scheme to commit the underlying felony. State v. Pina, 149 Idaho 140, 233 P.3d 71 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Malice.

In a first degree murder case, the trial court erred by improperly instructing the jury as to the definition of malice. The incorrect expansion of the definition of malice in the jury instructions lowered the state's burden of proof on that element of the offense. However, defendant was not entitled to post-conviction relief because the jury's determination that appellant's killing of the victim was premeditated negated any possibility of prejudice from the incorrect malice instruction. Sheahan v. State, 146 Idaho 101, 190 P.3d 920 (Ct. App. 2008).

Sentence.

Where defendant pleaded guilty to second degree murder for the shooting death of the victim in a gang-related shooting, the district court erred by refusing to follow the State's recommendation of a twenty-five year sentence and instead imposing a life sentence with sixty years determinate. The district court's self-imposed restriction requiring a determinate sentence of more than twenty-five years for all murder cases was out of step with judicial norms. State v. Izaguirre, 145 Idaho 820, 186 P.3d 676 (Ct. App. 2008).

Cited in: Porter v. State, 140 Idaho 780, 102 P.3d 1099 (2004); Stevens v. State, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 90 (Ct. App. Dec. 10, 2013).

RESEARCH REFERENCES

A.L.R. — Propriety of lesser-included-offense charge of voluntary manslaughter to jury in state murder prosecution — Twenty-first century cases. 3 A.L.R.6th 543.

Sufficiency of evidence to support homicide conviction where no body was produced. 65 A.L.R.6th 359.

Comment note: Construction and application of "crime of violence" provision of U.S.S.G. § 2L1.2 pertaining to unlawfully entering or remaining in the United States after commission of felony offense. 68 A.L.R. Fed. 2d 55.

18-4002. Express and implied malice.

JUDICIAL DECISIONS

ANALYSIS

Evidence.
Instructions to jury.
Intent.

Evidence.

Evidence was sufficient to support defendant's first-degree murder conviction for the killing of his wife. Although the victim's cause of death was ultimately listed as undetermined, the medical examiner testified that he

listed the cause of death as undetermined due to the fact that the evidence supported alternative causes of death; drug overdose, suffocation, or a combination of the two. While the victim had lethal levels of Unisom and toxic levels of Ambien in her system, there was also evidence that the victim was suffocated; specifically, bruises and abrasions on the victim's face and cuts on the inside of her lip. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Although there was no direct evidence that defendant killed his wife, there was substantial circumstantial evidence for the jury to conclude beyond a reasonable doubt that defendant was the person who suffocated or overdosed the victim; the evidence produced at trial revealed that it was unlikely that the victim's overdose was self-imposed, but there was substantial evidence linking defendant to her murder. The evidence revealed that defendant had a motive to murder his wife, was preparing people for her death, recently tried to poison her, tried to conceal the circumstances surrounding her death, and had the opportunity and the means to kill her. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

In homicide cases, the corpus delicti consists of two elements: the death of the individual named in the charge as being dead; and (2) the death was caused by a criminal act of the defendant. These two elements may be satisfied based solely on circumstantial evidence. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Instructions to Jury.

In a first degree murder case, the trial court erred by improperly instructing the jury as to the definition of malice. The incorrect expansion of the definition of malice in the jury instructions lowered the state's burden of proof on that element of the offense. However, defendant was not entitled to post-conviction relief because the jury's determination that appellant's killing of the victim was premeditated negated any possibility of prejudice from the incorrect malice instruction. Sheahan v. State, 146 Idaho 101, 190 P.3d 920 (Ct. App. 2008).

Intent.

Second degree murder does not require a finding of the specific intent to kill, but rather, it is sufficient that the defendant acted with an abandoned and malignant heart. State v. Porter, 142 Idaho 371, 128 P.3d 908 (2005).

Cited in: Sivak v. Hardison, 658 F.3d 898 (9th Cir. 2011); Stevens v. State, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 90 (Ct. App. Dec. 10, 2013).

RESEARCH REFERENCES

A.L.R. — Sufficiency of evidence to support homicide conviction where no body was produced. 65 A.L.R.6th 359.

18-4003. Degrees of murder.

JUDICIAL DECISIONS

Analysis

Elements of offense.
Felony murder rule.
First degree murder.
Instruction to jury.
Malice.
Sentence.

Elements of Offense.

In homicide cases, the corpus delicti consists of two elements: the death of the individual named in the charge as being dead; and (2) the death was caused by a criminal act of the defendant. These two elements may be satisfied based solely on circumstantial evidence. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Felony Murder Rule.

Even though subsection (d) of this section is silent as to whether third persons can be guilty of felony murder, English common law has expanded the felony-murder rule to apply to only those acting jointly and in concert with the actual killer for the common purpose of the underlying felony. State v. Pina, 149 Idaho 140, 233 P.3d 71 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

There is no mention in subsection (d) of this section of imputation of responsibility for a killing from the actual murderer to any person who was not a co-conspirator in the underlying felony. State v. Pina, 149 Idaho 140,

233 P.3d 71 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

In order to commit felony murder, the defendant need not have had the specific intent to kill. Rather, the defendant must have had the specific intent to commit the predicate felony. State v. Dunlap, — Idaho —, 313 P.3d 1 (2013).

First Degree Murder.

Evidence was sufficient to support defendant's first-degree murder conviction for the killing of his wife. Although the victim's cause of death was ultimately listed as undetermined, the medical examiner testified that he listed the cause of death as undetermined due to the fact that the evidence supported alternative causes of death; drug overdose, suffocation, or a combination of the two. While the victim had lethal levels of Unisom and toxic levels of Ambien in her system, there was also evidence that the victim was suffocated; specifically, bruises and abrasions on the victim's face and cuts on the inside of her lip. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Although there was no direct evidence that defendant killed his wife, there was substantial circumstantial evidence for the jury to conclude beyond a reasonable doubt that defendant was the person who suffocated or overdosed the victim; the evidence produced at trial revealed that it was unlikely that the victim's overdose was self-imposed, but there was substantial evidence linking defendant to her murder. The evidence revealed that defendant had a motive to murder his wife, was preparing people for her death, recently tried to poison her, tried to conceal the circumstances surrounding her death, and had the opportunity and the means to kill her. State v. Severson, 147 Idaho 694, 215 P.3d 414 (2009).

Evidence was sufficient to support defendant's conviction of first-degree murder because: (1) the medical examiner testified that the victim died from multiple stab wounds and that at least two knives were used; (2) defendant's friend testified that he bought four knives for defendant and his accomplice, using money given to him by defendant and his accomplice; (3) defendant and his accomplice were recorded discussing their plan to kill the victim; (4) defendant and his accomplice were together immediately after the victim's murder; (5) defendant and his accomplice jointly tried to hide weapons and clothing used during the murder; and (6) defendant made verbal and nonverbal assertions during the police interview that could be reasonably construed as confessing to stabbing the victim. State v. Adamcik, 152 Idaho 445, 272 P.3d 417, cert. denied, — U.S. —, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

Evidence was sufficient to convict defendant of first-degree murder under an aiding and abetting theory under § 19-1430, because there was evidence that: (1) defendant and his accomplice were in the house lying in wait for the victim; (2) two knives were used in the murder, both of which potentially caused the victim's death; (3) video footage taken immediately before and after the murder showed defendant's preparation for and involvement in the murder. It was not necessary for the state to prove that defendant inflicted the fatal wound. State v. Adamcik, 152 Idaho 445, 272 P.3d 417, cert. denied, — U.S. —, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

Instruction to Jury.

Where a third party grabbed defendant's gun during a kidnapping and shot the victim, the district court committed reversible error by relying on the proximate-cause theory — rather than the agency theory — when instructing the jury on felony murder under § 18-4001 and subsection (d) of this section; the instruction allowed the jury to find defendant liable for any killing that occurred contemporaneously with the kidnapping without regard to whether defendant and the shooter were engaged in a common scheme or plan to kidnap the victim. Idaho's felony-murder statute must be viewed through the lens of the English common law under § 73-116, which was that the felony-murder rule applied only to co-conspirators acting in concert in furtherance of the common plan or scheme to commit the underlying felony. State v. Pina, 149 Idaho 140, 233 P.3d 71 (2010), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

Instruction on a first degree murder charge, stating that the shooter must have willfully, unlawfully, deliberately, and with malice aforethought and premeditation killed the victims embodied the articulation of criminal intent under subsection (a) of this section. State v. Reid, 151 Idaho 80, 253 P.3d 754 (Ct. App. 2011).

Trial court did not commit fundamental error by instructing the jury on a lying-in-wait theory of first-degree murder after the state had abandoned that theory because it was not reasonably likely that the jury found defendant guilty of lying in wait without also finding him guilty of killing in a willful, deliberate, and premeditated fashion, and any confusion was remedied by a subsequent jury instruction in which the jury was informed that they had to find willfulness, deliberation, and premeditation in order to convict defendant of first-degree murder. State v. Adamcik, 152 Idaho 445, 272 P.3d 417, cert. denied, — U.S. —, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

Malice.

In instructing a jury on charges brought under subsection (d), it was not error for the court to fail to give a malice aforethought instruction: the intent necessary to commit the underlying felony (which in this case was aggravated battery on a child under twelve) substitutes for the malice element of murder. State v. Grove, 151 Idaho 483, 259 P.3d 629 (Ct. App. 2011).

Sentence.

Petitioner was not entitled to habeas relief based upon his contention that his due process rights were violated when his conviction for first degree murder was upheld on the basis of an offense not presented to the jury. He procedurally defaulted the claim by never arguing it to the Idaho courts and he suffered no actual disadvantage from the Idaho supreme court's characterization of his crime as torture murder rather than premeditated murder. The Idaho supreme court conducted this inquiry only to determine whether petitioner was eligible for the death penalty, and regardless of the characterization, petitioner was eligible for the death penalty. Both torture murder and premeditated murder are forms of first degree murder under this section, and under § 18-4004, every form of first degree murder is potentially punishable by death. Leavitt v. Arave, 383 F.3d 809 (9th Cir. 2004), cert. denied, 545 U.S. 1105, 125 S. Ct. 2540, 162 L. Ed. 2d 277 (2005).

Where defendant pleaded guilty to second degree murder for the shooting death of the victim in a gang-related shooting, the district court erred by refusing to follow the State's recommendation of a twenty-five year sentence and instead imposing a life sentence with sixty years determinate. The district court's self-imposed restriction requiring a determinate sentence of more than twenty-five years for all murder cases was out of step with judicial norms. State v. Izaguirre, 145 Idaho 820, 186 P.3d 676 (Ct. App. 2008).

Cited in: Porter v. State, 140 Idaho 780, 102 P.3d 1099 (2004); Sivak v. Hardison, 658 F.3d 898 (9th Cir. 2011); Stevens v. State, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 90 (Ct. App. Dec. 10, 2013).

RESEARCH REFERENCES

A.L.R. — Sufficiency of evidence to support homicide conviction where no body was produced. 65 A.L.R.6th 359.

18-4004. Punishment for murder.

JUDICIAL DECISIONS

ANALYSIS

Death penalty.
Due process.
Guilty plea.
Sentence.
—Double jeopardy.
—Ex post facto.
—Life term.
—Not excessive.
—Victim impact.
Waiver of counsel.

Death Penalty.

Petitioner was not entitled to habeas relief based upon his contention that his due process rights were violated when his conviction for first degree murder was upheld on the basis of an offense not presented to the jury. He procedurally defaulted the claim by never arguing it to the Idaho courts and he suffered no actual disadvantage from the Idaho supreme court's characterization of his crime as torture murder rather than premeditated murder. The Idaho supreme court conducted this inquiry only to determine whether petitioner was eligible for the death penalty, and regardless of the characterization, petitioner was eligible for the death penalty. Both torture murder and premeditated murder are forms of first degree murder under § 18-4003(a), and under this section, every form of first degree murder is potentially punishable by death. Leavitt v. Arave, 383 F.3d 809 (9th Cir. 2004), cert. denied, 545 U.S. 1105, 125 S. Ct. 2540, 162 L. Ed. 2d 277 (2005).

Due Process.

Where this section described first-degree

murder and prescribed a punishment of life imprisonment or death pursuant to the guidelines outlined in § 19-2515, defendant clearly had fair warning that death was a possible punishment for first-degree murder, and the supreme court of Idaho could not conclude that the subsequent statute authorized a more onerous punishment than that authorized by the statute, previously found unconstitutional. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Guilty Plea.

Petitioner who entered a plea of guilty to first-degree murder in exchange for the state's agreement not to seek an aggravated circumstance under this section was entitled to post-conviction relief due to counsel's erroneous advice that he would receive a fixed life sentence if he went to trial and only 10 years if he pleaded guilty. Booth v. State, 151 Idaho 612, 262 P.3d 255 (2011).

Sentence.

Defendant's unified sentence of life, with 22 years determinate, for first-degree murder was not excessive given that defendant was convicted of beating a two-year-old child to death. State v. Griffith, 144 Idaho 356, 161 P.3d 675 (Ct. App. 2007).

Where defendant pleaded guilty to second degree murder for the shooting death of the victim in a gang-related shooting, the district court erred by refusing to follow the State's recommendation of a twenty-five year sentence and instead imposing a life sentence with sixty years determinate. The district court's self-imposed restriction requiring a determinate sentence of more than twenty-five years for all murder cases was out of step with judicial norms. State v. Izaguirre, 145 Idaho 820, 186 P.3d 676 (Ct. App. 2008).

—Double Jeopardy.

Double jeopardy protection, was not implicated and was not a bar to resentencing defendant pursuant to the procedures set forth in the revised death penalty statutes, § 19-2515(3)(b) and this section. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

—Ex Post Facto.

No ex post facto error existed if defendant was resentenced under the revised death penalty statutes that only provided new procedures for determining aggravating circumstances redefined as the functional equivalent of the elements of capital murder. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

—Life Term.

Defendant's life sentence for first-degree murder did not constitute cruel and unusual punishment where defendant conspired, carefully planned, and executed the cold-blooded stabbing death of his fellow high school student based solely on his desire to achieve fame as a serial killer. Defendant's fixed life sentence fell within the sentencing parameters of this section. State v. Adamcik, 152 Idaho 445, 272 P.3d 417, cert. denied, — U.S. —, 133 S. Ct. 141, 184 L. Ed. 2d 68 (2012).

—Not Excessive.

Defendant's sentence for life imprisonment following his guilty plea to the charge of second degree murder was not excessive given that defendant decapitated the victim and then mutilated the severed head and defendant's own expert testified that defendant would still be a danger to society even if he stayed on his medication. State v. Cope, 142 Idaho 492, 129 P.3d 1241 (2006).

—Victim Impact.

Where defendant was found guilty of murder, the appellate court declined to apply a harmless error analysis and remand the case for resentencing with directions to the trial court to exclude victim impact statements calling for the death penalty, or other information that did not comply with *Booth*, and *Payne*, in order not to violate the Eighth Amendment. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Waiver of Counsel.

Defendant's waiver of counsel was valid, and the district court's decision to deny him an investigator was not error where the district judge advised defendant of the dangers of self-representation and recommended against going to trial without the assistance of counsel, the defendant had been declared not only competent but also of above average intelligence, defendant was provided with an attorney advisor, and the district court's warnings of the dangers and potential risks of self-representation were constitutionally sufficient. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Cited in: State v. Maynard, 139 Idaho 876, 88 P.3d 695 (2004).

18-4004A. Notice of intent to seek death penalty. — (1) A sentence of death shall not be imposed unless the prosecuting attorney filed written notice of intent to seek the death penalty with the court and served the

notice upon the defendant or his attorney of record no later than sixty (60) days after entry of a plea. Any notice of intent to seek the death penalty shall include a listing of the statutory aggravating circumstances that the state will rely on in seeking the death penalty. The state may amend its notice upon a showing of good cause at any time prior to trial. A notice of intent to seek the death penalty may be withdrawn at any time prior to the imposition of sentence. However, upon a showing of good cause, and a stipulation by the state and the defendant and his attorney of record the court may extend the time for the filing of the notice of intent to seek the death penalty for a reasonable period of time.

(2) In the event that the prosecuting attorney does not file a notice of intent to seek the death penalty or otherwise puts the court on notice that the state does not intend to seek the death penalty, the court shall inform potential jurors at the outset of jury selection that the death penalty is not a sentencing option for the court or the jury.

History.
I.C., § 18-4004A, as added by 1998, ch. 96, § 2, p. 343; am. 2003, ch. 19, § 2, p. 71; am. 2008, ch. 300, § 1, p. 837.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 300, in subsection (1), substituted "sixty (60) days" for "thirty (30) days" and added the last sentence.

JUDICIAL DECISIONS

ANALYSIS

Ex post facto.
Procedural change.

Ex Post Facto.
No ex post facto error existed if defendant was resentenced under the revised death penalty statutes that only provided new procedures for determining aggravating circumstances redefined as the functional equivalent of the elements of capital murder. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

Procedural Change.
This section provides that notice of intent to seek the death penalty can be filed at any time prior to 30 days after entry of plea and shall include a listing of the statutory aggravating circumstances that the state will rely on in seeking the death penalty, and because the new law does not alter the definition of the crime, nor increases the punishment for which a defendant is eligible as a result of that conviction it is a procedural change. State v. Lovelace, 140 Idaho 73, 90 P.3d 298, cert. denied, 543 U.S. 936, 125 S. Ct. 323, 160 L. Ed. 2d 242 (2004).

18-4006. Manslaughter defined. — Manslaughter is the unlawful killing of a human being including, but not limited to, a human embryo or fetus, without malice. It is of three (3) kinds:

(1) Voluntary — upon a sudden quarrel or heat of passion.

(2) Involuntary — in the perpetration of or attempt to perpetrate any unlawful act, other than those acts specified in section 18-4003(d), Idaho Code; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection; or in the operation of any firearm or deadly weapon in a reckless, careless or negligent manner which produces death.

(3) Vehicular — in which the operation of a motor vehicle is a significant cause contributing to the death because of:

(a) The commission of an unlawful act, not amounting to a felony, with gross negligence; or

(b) The commission of a violation of section 18-8004 or 18-8006, Idaho Code; or

(c) The commission of an unlawful act, not amounting to a felony, without gross negligence.

Notwithstanding any other provision of law, any evidence of conviction under subsection (3)(b) of this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of subsection (3)(b) of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

History.

I.C., § 18-4006, as added by 1972, ch. 336, § 1, p. 844; am. 1983 (Ex. Sess.), ch. 3, § 17, p. 8; am. 1984, ch. 22, § 5, p. 25; am. 1997, ch. 103, § 1, p. 244; am. 2002, ch. 330, § 2, p. 935; am. 2007, ch. 43, § 1, p. 104; am. 2009, ch. 166, § 1, p. 496.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 43, substituted "other than those acts specified in section 18-4003(d), Idaho Code" for "other than arson, rape, robbery, kidnapping, burglary, or mayhem" in subsection (2).

The 2009 amendment, by ch. 166, made a technical correction to the designation scheme used in this section.

JUDICIAL DECISIONS

Analysis

Indictment and information.
Instructions to jury.
Intent.
Nolo contendere plea.
Vehicular manslaughter.

Indictment and Information.

Defendant, driving in wintry conditions, started to negotiate a curve, when his vehicle crossed into the opposite lane and collided head-on with another vehicle; the passenger in the other vehicle was killed. These facts, as alleged in the complaint charging defendant with misdemeanor vehicular manslaughter, were sufficient to confer jurisdiction on the trial court. State v. McNair, 141 Idaho 263, 108 P.3d 410 (Ct. App. 2005).

Instructions to Jury.

Defendant's conviction for involuntary manslaughter for killing her child in the perpetration of an unlawful act was proper pursuant to § 18-1501(1) where the extrajudicial statements were corroborated by the facts that the child died while under the exclusive care of defendant and that the statements were consistent with the autopsy results; further, the failure to give a jury instruction was harmless error as the verdict rested upon the independent ground that the defendant also committed injury to a child. State v. Tiffany, 139 Idaho 909, 88 P.3d 728 (2004), overruled in part, State v. Suriner, 154 Idaho 81, 294 P.3d 1093 (2013).

In a prosecution for misdemeanor vehicular manslaughter, the jury instructions must require the state to prove a culpable mental state amounting to at least simple negligence. State v. McNair, 141 Idaho 263, 108 P.3d 410 (Ct. App. 2005).

Intent.

State supreme court disavowed those cases that held that voluntary manslaughter required a finding of an intent to kill. State v. Porter, 142 Idaho 371, 128 P.3d 908 (2005).

Nolo Contendere Plea.

Magistrate properly rejected a nolo contendere plea entered by a defendant charged with vehicular manslaughter, as such pleas are no longer allowed in criminal proceedings under Idaho law. State v. Salisbury, 143 Idaho 476, 147 P.3d 108 (Ct. App. 2006).

Vehicular Manslaughter.

In prosecution for involuntary manslaughter, magistrate court erred in refusing to allow defendant to withdraw his guilty plea where the record did not show that defendant was informed that he would be ordered to pay child support for the victim's five minor children as a consequence of his plea. State v. Heredia, 144 Idaho 95, 156 P.3d 1193 (2007).

RESEARCH REFERENCES

A.L.R. — Propriety of lesser-included-offense charge of voluntary manslaughter to jury in state murder prosecution — Twenty-first century cases. 3 A.L.R.6th 543.

18-4007. Punishment for manslaughter. — Manslaughter is punishable as follows:

(1) Voluntary — by a fine of not more than fifteen thousand dollars ($15,000), or by a sentence to the custody of the state board of correction not exceeding fifteen (15) years, or by both such fine and imprisonment.

(2) Involuntary — by a fine of not more than ten thousand dollars ($10,000), or by a sentence to the custody of the state board of correction not exceeding ten (10) years, or by both such fine and imprisonment.

(3) Vehicular — in the operation of a motor vehicle:

(a) For a violation of section 18-4006(3)(a), Idaho Code, by a fine of not more than ten thousand dollars ($10,000), or by a sentence to the custody of the state board of correction not exceeding ten (10) years, or by both such fine and imprisonment.

(b) For a violation of section 18-4006(3)(b), Idaho Code, by a fine of not more than fifteen thousand dollars ($15,000), or by a sentence to the custody of the state board of correction not exceeding fifteen (15) years, or by both such fine and imprisonment.

(c) For a violation of section 18-4006(3)(c), Idaho Code, by a fine of not more than two thousand dollars ($2,000), or by a jail sentence not exceeding one (1) year, or by both such fine and jail sentence.

(d) In addition to the foregoing, any person convicted of a violation of section 18-4006(3), Idaho Code, which resulted in the death of the parent or parents of minor children may be ordered by the court to pay support for each such minor child until the child reaches the age of eighteen (18) years. In setting the amount of support, the court shall consider all relevant factors. The nonpayment of such support shall be subject to enforcement and collection by the surviving parent or guardian of the child in the same manner that other child support orders are enforced as provided by law. In no event shall the child support judgment or order imposed by the court under this section be paid or indemnified by the proceeds of any liability insurance policy.

(e) In addition to the foregoing, the driver's license of any person convicted of a violation of section 18-4006(3), Idaho Code, may be suspended for a time determined by the court.

History.

I.C., § 18-4007, as added by 1983 (Ex. Sess.), ch. 3, § 19, p. 8; am. 1992, ch. 33, § 1, p. 97; am. 1994, ch. 413, § 1, p. 1301; am. 1997, ch. 311, § 1, p. 922; am. 2002, ch. 356, § 1, p. 1013; am. 2009, ch. 166, § 2, p. 496.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 166, in subsection (3)(d), added the present second sentence and deleted "Support shall be established in accordance with the child support guidelines then in effect" from the beginning of the present third sentence.

JUDICIAL DECISIONS

Child Support.

In prosecution for involuntary manslaughter, magistrate court erred in refusing to allow defendant to withdraw his guilty plea where the record did not show that defendant was informed that he would be ordered to pay child support for the victim's five minor children as a consequence of his plea. State v. Heredia, 144 Idaho 95, 156 P.3d 1193 (2007).

18-4012. Excusable homicide.

JUDICIAL DECISIONS

Cited in: State v. McNair, 141 Idaho 263, 108 P.3d 410 (Ct. App. 2005).

18-4017. Causing a suicide — Assisting in a suicide — Injunctive relief — Revocation of license — Exceptions. — (1) A person is guilty of a felony if such person, with the purpose of assisting another person to commit or to attempt to commit suicide, knowingly and intentionally either:

(a) Provides the physical means by which another person commits or attempts to commit suicide; or

(b) Participates in a physical act by which another person commits or attempts to commit suicide.

(2) Any person convicted of or who pleads guilty to a violation of the provisions of subsection (1) of this section shall be sentenced to the custody of the state board of correction for a period not to exceed five (5) years.

(3) The licensing authority that issued a license or certification to a health care professional who is convicted of or who pleads guilty to a violation of the provisions of subsection (1) of this section, or who has had a judgment of contempt of court for violating an injunction issued pursuant to the provisions of subsection (4) of this section, may revoke the license or certification of such health care professional upon receipt of:

(a) A copy of the record of the criminal conviction or plea of guilty for a felony in violation of the provisions of subsection (1) of this section; or

(b) A copy of the record of a judgment of contempt of court for violating an injunction issued pursuant to the provisions of subsection (4) of this section.

(4) Upon proper application to the court, injunctive relief against any person who is reasonably believed to be about to violate, or who is in the course of violating, the provisions of subsection (1) of this section may be obtained by any person who is:

(a) The spouse, parent, child or sibling of the person who would commit suicide;

(b) A court appointed guardian of the person who would commit suicide;

(c) Entitled to inherit from the person who would commit suicide;

(d) A health care provider of the person who would commit suicide; or

(e) A public official with appropriate jurisdiction to prosecute or enforce the laws of this state.

(5) The following shall not be deemed a violation of the provisions of this section:

(a) A health care professional who administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort, even if any such medication or procedure may hasten or increase the risk of death, unless such medications or procedures are knowingly and intentionally administered, prescribed or dispensed to cause death.

(b) A health care professional who withholds or withdraws treatment or procedures in compliance with a living will and durable power of attorney for health care, a health care directive, a physician orders for scope of treatment form or any other similar document that satisfies the elements set forth in chapter 45, title 39, Idaho Code, or upon a refusal to consent or withdrawal of consent by the patient, or if the patient is unable to give or refuse consent, and does not have a living will and durable power of attorney for health care, a health care directive, a physician orders for scope of treatment form or any other similar document that satisfies the elements set forth in chapter 45, title 39, Idaho Code, by a person authorized to refuse or withdraw consent pursuant to section 39-4504, Idaho Code, shall not be deemed to have violated the provisions of this section.

(6) As used in this section:

(a) "Health care professional" means any person licensed, certified or registered by the state of Idaho to deliver health care.

(b) "Suicide" means the act or instance of taking one's own life.

History.
I.C., § 18-4017, as added by 2011, ch. 194, § 1, p. 555.

CHAPTER 41

INDECENCY AND OBSCENITY

SECTION.
18-4109. Punishment for violations.
SECTION.
18-4116. Indecent exposure.

18-4109. Punishment for violations. — The following punishments are applicable to this act:

Every person who violates sections 18-4103, 18-4104 or 18-4105, Idaho Code, is punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment for each separate violation. If such person has twice been convicted within the immediately preceding two (2) years for

any offense contained in chapter 41, title 18, Idaho Code, and these convictions were for offenses which occurred ten (10) or more days apart, a third or subsequent violation of sections 18-4103, 18-4104 or 18-4105, Idaho Code, within this two (2) year period is punishable as a felony.

History.
I.C., § 18-4109, as added by 1973, ch. 305, § 12, p. 655; am. 1976, ch. 81, § 8, p. 258; am. 2006, ch. 71, § 14, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "three hundred dollars ($300)" in the first sentence.

18-4116. Indecent exposure. — Every person who willfully and lewdly, either:

(1) Exposes his or her genitals, in any public place, or in any place where there is present another person or persons who are offended or annoyed thereby; or,

(2) Procures, counsels, or assists any person so to expose his or her genitals, where there is present another person or persons who are offended or annoyed thereby is guilty of a misdemeanor.

Any person who pleads guilty to or is found guilty of a violation of subsection (1) or (2) of this section or a similar statute in another state or any local jurisdiction for a second time within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed ten (10) years.

History.
I.C., § 18-4116, as added by 1996, ch. 241, § 1, p. 771; am. 2006, ch. 178, § 8, p. 545.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 178, added "and shall be imprisoned in the state prison for a period not to exceed ten (10) years" at the end of last paragraph.

Effective Dates.
Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

RESEARCH REFERENCES

A.L.R. — Validity of state and municipal indecent exposure statutes and ordinances. 71 A.L.R.6th 283.

CHAPTER 43
IRRIGATION WORKS

SECTION.
18-4308. Change of ditch, canal, lateral, drain or buried irrigation conduit.
18-4309. Unauthorized tampering with measuring devices.

18-4302. Wasting water used for irrigation.

JUDICIAL DECISIONS

In General.

Damages alleged by the owners stemmed from a project filling a reservoir with water, not from any resulting waste of that water, and the fact the use of the water was wasteful did not increase the burden of using the flowage easement to the servient estate; the project's use of the easement did not amount to waste under this section, but the court did not condone the waste of water. McKay v. Boise Project Bd. of Control, 141 Idaho 463, 111 P.3d 148 (2005).

18-4308. Change of ditch, canal, lateral, drain or buried irrigation conduit. — Where any ditch, canal, lateral or drain has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling the said land, shall have the right at his own expense to change said ditch, canal, lateral, drain or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such ditch, canal, lateral, drain or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change.

A landowner shall also have the right to bury the ditch, canal, lateral or drain of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the owner of the ditch, canal, lateral or drain, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner.

The written permission of the owner of a ditch, canal, lateral, drain or buried irrigation conduit must first be obtained before it is changed or placed in buried pipe by the landowner.

While the owner of a ditch, canal, lateral, drain or buried irrigation conduit shall have no right to relocate it on the property of another without permission, a ditch, canal, lateral or drain owner shall have the right to place it in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or

county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but no longer than thirty (30) days after the completion of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, canal, lateral or drain, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the conduit owner.

Any person or persons who relocate or bury a ditch, canal, lateral or drain contrary to the provisions of this section shall be guilty of a misdemeanor.

History.
I.C., § 18-4308, as added by 1972, ch. 336, § 1, p. 844; am. 1994, ch. 151, § 2, p. 345; am. 2000, ch. 355, § 1, p. 1190; am. 2002, ch. 115, § 3, p. 326; am. 2005, ch. 331, § 2, p. 1038.

JUDICIAL DECISIONS

Cited in: Statewide Constr., Inc. v. Pietri, 150 Idaho 423, 247 P.3d 650 (2011).

18-4309. Unauthorized tampering with measuring devices. — Every person who shall willfully waste water for irrigation, or who shall willfully open, close, change or disturb, or interfere with, any headgate or water box or valve or measuring or regulating device, without authority, shall be guilty of a misdemeanor. The water masters or their assistants, within their district, shall have power to arrest any person or persons offending and turn them over to the sheriff or the nearest peace officer of the county in which such offense is committed, and immediately upon delivering such person so arrested into the custody of either of such officers, it shall be the duty of the water master making such arrest to make complaint, in writing and under oath, before the magistrate judge of such county, against the person so arrested.

History.
I.C., § 18-4309, as added by 1972, ch. 336, § 1, p. 844; am. 2012, ch. 20, § 3, p. 66.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 20, twice substituted "willfully" for "willfully" in the first sentence and substituted "magistrate judge" for "proper justice of the peace, or the probate judge" near the end of the last sentence.

CHAPTER 45
KIDNAPING

18-4501. Kidnaping defined.

JUDICIAL DECISIONS

ANALYSIS

Concealment of child.
Confines.

Concealment of Child.

Where father had joint physical custody of a child under a parenting plan, defendant/mother, who did not deliver the child to the father per the parenting plan and who concealed the child from the father for eight months, could be charged and convicted of kidnapping under subsection 2. State v. Anderson, 154 Idaho 54, 294 P.3d 180 (2013).

Confines.

Ten-year-old victim's testimony that defendant, while in his trailer, knocked her down and smothered her with a pillow until she agreed to remove her clothing is sufficient to prove beyond a reasonable doubt that he confined her against her will. Nelson v. Blades, 2009 U.S. Dist. LEXIS 24645 (D. Idaho Mar. 23, 2009).

RESEARCH REFERENCES

A.L.R. — Comment note: Construction and application of "crime of violence" provision of U.S.S.G. § 2L1.2 pertaining to unlawfully entering or remaining in the United States after commission of felony offense. 68 A.L.R. Fed. 2d 55.

18-4502. First degree kidnapping — Ransom.

JUDICIAL DECISIONS

Evidence.

Testimony that showed that defendant would not permit ten-year-old female victim to leave his trailer, that he forced her to remove her clothes by smothering her with a pillow, and that he committed a sexual act on her was sufficient to convict him of first degree kidnapping. Nelson v. Blades, 2009 U.S. Dist. LEXIS 24645 (D. Idaho Mar. 23, 2009).

18-4504. Punishment — Liberation of kidnapped person.

JUDICIAL DECISIONS

Death Penalty.

Imposition of the death penalty for first-degree kidnapping that resulted in the death of the victim did not violate the Eighth Amendment; the trial court found that the inmate intended to shoot and kill the victim when the kidnapping occurred. Rhoades v. Henry, 638 F.3d 1027 (9th Cir.), cert. denied, — U.S. —, 132 S. Ct. 401, 181 L. Ed. 3d 263 (2011).

18-4505. Inquiry into mitigating or aggravating circumstances — Sentence in kidnapping cases — Statutory aggravating circumstances — Judicial findings.

JUDICIAL DECISIONS

ANALYSIS

Aggravating factors.

—Grievous mental or physical injury.

Aggravating Factors.

Ample evidence supported the finding of kidnapping aggravators with respect to intentional infliction of grievous mental or physical injury; the habeas petitioner shot the victim three times and fired other shots at her while she was lying on the ground; the victim had sand under her fingernails and scattered scrapes, and she may have lingered, wounded, for an hour or so. Rhoades v. Henry, 596 F.3d 1170 (9th Cir. 2010).

Where a habeas petitioner was sentenced to death for murder and kidnapping after he was convicted of kidnapping a woman in her van, forcing her to cash two checks, taking her to a remote, rural area, raping her, and shooting her nine times, a rational trier of fact could have found the aggravating factor under subsection (6)(a) of this section beyond a reasonable doubt. Rhoades v. Henry, 611 F.3d 1133 (9th Cir. 2010).

Habeas petitioner's claim, that his death sentence was unlawful because the aggravating circumstances under subsection (6) of this section allowed for death to be imposed for as little as a mental injury or the mere risk of harm, was rejected; the trial court did not find an unadorned mental injury or just a risk of harm, but found that petitioner's conduct subjected the victim to grievous mental injury and to a great risk of death that, in fact, ensued. Rhoades v. Henry, 611 F.3d 1133 (9th Cir. 2010).

—Grievous Mental or Physical Injury.

Evidence was constitutionally sufficient to support imposition of the death penalty on an inmate for first-degree kidnapping, where there was intentional infliction of grievous mental or physical injury. The inmate shot the victim three times, and the victim may have lived for an hour or so before dying. Rhoades v. Henry, 638 F.3d 1027 (9th Cir.), cert. denied, — U.S. —, 132 S. Ct. 401, 181 L. Ed. 3d 263 (2011).

18-4506. Child custody interference defined — Defenses — Punishment.

JUDICIAL DECISIONS

ANALYSIS

Failure to return child.
Greater relationship.
Sufficiency of the evidence.

Failure to Return Child.

After the husband pleaded guilty to domestic battery, his wife left Idaho and fled to Oregon with their minor child; the magistrate court abused its discretion by ordering the wife to return with their child to Boise or surrender child custody. The record did not show that the magistrate court considered the mother's statutory defenses to child custody interference. Wife moved to Oregon to protect herself and her daughter, and it was error for the magistrate court to fail to make findings on the wife's argument that the husband's habitual domestic violence overcame the presumption that joint custody was in the child's best interest. Schultz v. Schultz, 145 Idaho 859, 187 P.3d 1234 (2008).

Greater Relationship.

Trial court erred in disregarding the presumption for joint custody and determining that mother's greater relationship with child indicated that giving her sole legal and physical custody would be in the child's best interests, where her greater relationship was primarily due to her illegal actions of absconding with the child to another state and obtaining a false domestic violence protection order there. Hopper v. Hopper, 144 Idaho 624, 167 P.3d 761 (2007).

Sufficiency of the Evidence.

Defendant's conviction for felony child custody interference was appropriate because a joint temporary restraining order required her to keep her son in Idaho, and there was substantial and competent evidence showing she took, kept, and withheld the son from the father. State v. Calver, — Idaho —, 307 P.3d 1233 (Ct. App. 2013).

Even relying on a violation of a civil joint temporary restraining order (JTRO) to show a mother acted without lawful authority, the state was not required to show that defendant had notice of possible criminal penalties, within the JTRO itself, as a condition to finding her criminally liable. State v. Calver, — Idaho —, 307 P.3d 1233 (Ct. App. 2013).

CHAPTER 46

LARCENY AND RECEIVING STOLEN GOODS

SECTION.
18-4616. Defacing marks on logs or lumber.
18-4621. Stealing electric current — Tampering with meters.
18-4626. Willful concealment of goods, wares or merchandise — Defense for detention.
18-4629. Penalty for transportation of forest products without a permit, contract, bill of sale, or product load receipt.

18-4616. Defacing marks on logs or lumber. — Every person who cuts out, alters, mutilates, changes, disfigures, or defaces any legally recorded mark or marks made upon any log, lumber, or wood, or re-marks or puts a false mark thereon with intent to prevent the owner from discovering its identity, or places any mark upon, or cuts, saws, manufactures, or in any manner appropriates to his own use, or to the use of any other person, any prize log or timber, is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000), or imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. In any prosecution for a violation of the provisions of this section relating to prize logs it shall be sufficient to prove that such logs are prize logs without further proof of ownership.

History.
I.C., § 18-4616, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 15, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$500."

18-4621. Stealing electric current — Tampering with meters. — Whoever shall without permission or authority of any person, firm or corporation engaged in the generation or distribution of electricity, make connections, or cause connections to be made, by wire or wires or by any other device, with the wires, cables or conductors, or any of them, of any such person, firm or corporation, for the purpose of obtaining or diverting electric current from such wires, cables or conductors; or whoever shall, without permission or authority from any person, firm or corporation using any meter or meters erected or set up for the purpose of registering or recording the amount of electric current supplied to any customer of such person, firm or corporation within this state, connect or cause to be connected by wire or any other device, any such meter or meters, or change or shunt the wiring leading to or from any such meter or meters, or by any device or appliance or means whatsoever tamper with any such meter or meters in such manner that such meter or meters do not measure or record the full amount of electric current supplied to such customer, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the

county jail for a term not exceeding six (6) months, or by both such fine and imprisonment: provided, that nothing herein contained shall be deemed to affect the right of any person, firm or corporation to recover by action in any court of competent jurisdiction damages for any injury done by such unlawful acts.

History.
I.C., § 18-4621, as added by 1972, ch. 336, § 1, p. 844; am. 2005, ch. 359, § 8, p. 1133.

18-4626. Willful concealment of goods, wares or merchandise — Defense for detention. — (a) Whoever, without authority, willfully conceals the goods, wares or merchandise of any store or merchant, while still upon the premises of such store or merchant, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment. Goods, wares or merchandise found concealed upon the person shall be prima facie evidence of a willful concealment.

(b) Any owner, his authorized employee or agent of any store or merchant, apprehending or detaining a person on or in the immediate vicinity of the premises of any store or merchant, for the purpose of investigation or questioning as to the ownership of any goods, wares or merchandise, shall have as a defense in any action, civil or criminal, that such detention of the person or persons was in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the store or merchant, his authorized employee or agent, and that such peace officer, owner, employee or agent had probable cause to believe that the person so detained was committing or attempting to commit an offense as set forth in subsection (a) of this section. "Reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the store or merchant relative to ownership of the merchandise.

History.
I.C., § 18-4626, as added by 1972, ch. 336, § 1, p. 844; am. 1973, ch. 258, § 1, p. 510; am. 2005, ch. 359, § 9, p. 1133.

18-4629. Penalty for transportation of forest products without a permit, contract, bill of sale, or product load receipt. — Violation of the provisions of this section 18-4629, Idaho Code, shall constitute a misdemeanor, and upon conviction, be punishable by a fine of not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or both.

History.
I.C., § 18-4629, as added by S.L. 1975, ch. 243, § 3, p. 653; am. 2006, ch. 71, § 16, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "section 18-4629, Idaho Code," for "this act" and "one thousand dollars ($1,000)" for "three hundred dollars ($300)."

CHAPTER 49
LOTTERIES

SECTION.
18-4907. Search, seizure, and confiscation.

18-4907. Search, seizure, and confiscation. — All moneys and property offered for sale or distribution in violation of any of the provisions of this chapter are forfeited to the state. And whenever any judge shall have knowledge or receive satisfactory information of the violation of any of the provisions of this chapter within his district or county, it shall be his duty forthwith to issue his warrant, directed to the sheriff or constable, to seize and bring before him such moneys and property offered for sale or distribution. And, upon the conviction of any person or persons for violation of any of the provisions of this chapter, any property so seized as provided in this section, shall be sold by the sheriff or constable at public auction and the proceeds thereof paid over to the county treasurer of said county for the county school fund.

History.
I.C., § 18-4907, as added by 1972, ch. 336, § 1, p. 844; am. 2012, ch. 20, § 4, p. 66.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 20, deleted "or justice of the peace" following "judge" at the beginning of the second sentence and deleted "above" preceding "provided" near the middle of the last sentence.

CHAPTER 54
PERJURY AND SUBORNATION OF PERJURY

SECTION.
18-5402. Oath defined.

18-5401. Perjury defined.

JUDICIAL DECISIONS

Jury Instructions.
Jury instruction regarding unqualified statements pursuant to § 18-5408 was not an impermissible variance from or constructive amendment of a perjury charge brought under this section. Section 18-5408 does not create a separate type of perjury, but it is, rather, a further definition of the offense. State v. Wolfrum, 145 Idaho 44, 175 P.3d 206 (Ct. App. 2007).

18-5402. Oath defined. — The term "oath" as used in section 18-5401,

Idaho Code, includes an affirmation, and every other mode authorized by law of attesting the truth of that which is stated, including a certification or declaration under penalty of perjury permitted by the law of this state, whether subscribed within or without this state.

History.
I.C., § 18-5402, as added by 1972, ch. 336, § 1, p. 844; am. 2013, ch. 259, § 2, p. 636.

STATUTORY NOTES

Cross References.
Certification or declaration under penalty of perjury, § 9-1406.

Amendments.
The 2013 amendment, by ch. 259, substituted "section 18-5401, Idaho Code" for "the last section" near the beginning and added "including a certification or declaration under penalty of perjury permitted by the law of this state, whether subscribed within or without this state" at the end.

18-5408. Unqualified statement of unknown fact.

JUDICIAL DECISIONS

Jury Instructions.
Jury instruction regarding unqualified statements pursuant to this section was not an impermissible variance from or constructive amendment of a perjury charge brought under § 18-5401. This section does not create a separate type of perjury, but it is, rather, a further definition of the offense. State v. Wolfrum, 145 Idaho 44, 175 P.3d 206 (Ct. App. 2007).

CHAPTER 56

PROSTITUTION

SECTION.
18-5610. Utilizing a person under eighteen years of age for prostitution — Penalties.
18-5612. Property subject to criminal forfeiture.
18-5615 — 18-5617. [Reserved.]
18-5618. Property subject to forfeiture.
18-5619. Inventory.
18-5620. Forfeiture request — Rebuttable presumption.
18-5621. Preservation of property — Warrant of seizure — Protective orders.
18-5622. Institution of proceedings — Third parties.
18-5623. Personal property — Rights of third parties.
18-5624. Real property — Rights of third parties.
18-5625. Proportionality.
18-5626. Authority of the attorney general.
18-5627. Bar on intervention.
18-5628. Jurisdiction — Depositions.
18-5629. Disposition of property.
18-5630. Forfeiture of substitute property.
18-5631. Construction.

18-5602. Procurement — Definition and penalty.

JUDICIAL DECISIONS

Attempt.
Defendant's convictions for the attempted procurement of prostitution and for the procurement of prostitution were proper because the attempt statute was permitted to be combined with the procurement of prostitution statute in order to convict defendant for the attempted procurement of prostitution. State v. Grazian, 144 Idaho 510, 164 P.3d 790 (2007), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

18-5610. Utilizing a person under eighteen years of age for prostitution — Penalties. — (1) Every person who exchanges or offers to exchange anything of value for sexual conduct or sexual contact with a person under the age of eighteen (18) years shall be guilty of a felony punishable by imprisonment in the state penitentiary for a period of not less than two (2) years, which may be extended to life imprisonment, or by a fine not exceeding fifty thousand dollars ($50,000), or by both such imprisonment and fine.

(2) As used in this section:

(a) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.

(b) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

(c) "Anything of value" includes, but is not limited to, a fee, food, shelter, clothing, medical care or membership in a criminal gang as defined in section 18-8502, Idaho Code.

History.
I.C., § 18-5610, as added by 2013, ch. 240, § 1, p. 566.

18-5612. Property subject to criminal forfeiture. — (1) Any person who is found guilty of, who enters a plea of guilty or who is convicted of a violation of section 18-5602 or 18-5609, Idaho Code, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(a) Any property constituting, or derived from, any proceeds the person obtained directly or indirectly as the result of such violation; and

(b) Any of the person's property used, or intended to be used, in any manner or part to commit or to facilitate the commission of such violation.

(2) The court, in imposing sentence on such person as described in subsection (1) of this section, shall order, in addition to any other sentence imposed, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed in any manner to prevent the state of Idaho, the attorney general or the appropriate prosecuting attorney from requesting restitution pursuant to section 19-5304, Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

History.
I.C., § 18-5612, as added by 2013, ch. 240, § 2, p. 566.

18-5613. Prostitution.

JUDICIAL DECISIONS

Cited in: State v. Grazian, 144 Idaho 510, 164 P.3d 790 (2007).

18-5615 — 5617. [Reserved.]

18-5618. Property subject to forfeiture. — Property subject to criminal forfeiture under this chapter includes:

(1) "Real property" including things growing on, affixed to or found on the land; and

(2) "Tangible and intangible personal property" including rights, privileges, interests, claims and securities.

History.
I.C., § 18-5618, as added by 2013, ch. 249, § 1, p. 601.

18-5619. Inventory. — Any peace officer of this state seizing property subject to forfeiture under the provisions of this chapter shall cause a written inventory to be made and shall maintain custody of the same until all legal actions have been exhausted. A copy of the inventory shall be sent, within five (5) days of the seizure, to the director of the Idaho state police. Upon completion of the forfeiture action, pursuant to this chapter, a final inventory shall be made that indicates the disposition of the seized property, and a copy of that inventory shall also be sent to the director of the Idaho state police.

History.
I.C., § 18-5619, as added by 2013, ch. 249, § 2, p. 601.

STATUTORY NOTES

Cross References.
Director of Idaho state police, § 67-2901.

18-5620. Forfeiture request — Rebuttable presumption. — Property subject to criminal forfeiture under the provisions of this chapter shall not be ordered forfeited unless the attorney general or the appropriate prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property as described in section 18-5612, Idaho Code. The attorney general or appropriate prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a separate part II forfeiture request and notice with the trial court.

There is a rebuttable presumption that any property of a person subject to the provisions of section 18-5612, Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

(1) The property was acquired by a person during the period of the violation of either section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement), Idaho Code, or within a reasonable time after such violation; and

(2) There was no likely source for such property other than the violation of either section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement), Idaho Code.

History.
I.C., § 18-5620, as added by 2013, ch. 249, § 3, p. 601.

STATUTORY NOTES

Cross References.
Attorney general, § 67-1401 et seq.

Compiler's Notes.
The words enclosed in parentheses so appeared in the law as enacted.

18-5621. Preservation of property — Warrant of seizure — Protective orders. — (1) Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in section 18-5612, Idaho Code, for forfeiture under the provisions of this chapter upon the filing of an indictment or information charging a violation of either section 18-5609 (inducing a person under eighteen years of age into prostitution) or section 18-5602 (procurement) for which criminal forfeiture may be ordered and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this chapter.

(2) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this chapter in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (1) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(3) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this chapter may be used to offset ordinary and necessary expenses to the property that are required by law, or that are necessary to protect the interests of the state of Idaho or third parties.

History.
I.C., § 18-5621, as added by 2013, ch. 249, § 4, p. 601.

STATUTORY NOTES

Compiler's Notes.
The words enclosed in parentheses so appeared in the law as enacted.

18-5622. Institution of proceedings — Third parties. — Upon the filing of a part II forfeiture request pursuant to section 18-5620, Idaho Code, or in the event of seizure pursuant to a warrant of seizure, or upon entry of an order of forfeiture pursuant to section 18-5612, Idaho Code, the attorney general or appropriate prosecuting attorney shall, if appropriate, institute proceedings pursuant to section 18-5623 or 18-5624, Idaho Code, or both, within five (5) days of such event.

History.
I.C., § 18-5622, as added by 2013, ch. 249, § 5, p. 601.

18-5623. Personal property — Rights of third parties. — (1) Within five (5) days of any of the events specified in section 18-5622, Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title or interest in any such personal property according to one (1) of the following methods:

(a) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft or other conveyance, by mailing notice by certified mail to the address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained;

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement; or

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the last known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the

titled motor vehicle, aircraft or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance was being used, had been used or was intended to be used for the purposes described in section 18-5612, Idaho Code.

(b) A co-owner or claimant of any right, title or interest in the property may prove that his right, title or interest, whether under a lien, mortgage, security agreement, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used or was intended to be used for the purpose alleged.

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney general or appropriate prosecuting attorney shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee or secured party of the property, if any, up to the value of his interest in the property;
2. The balance, if any, in the following order:

(A) To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, storage or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state that seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under the provisions of this chapter.

(C) The remainder, if any, to the crime victims compensation account as established in section 72-1009, Idaho Code.

(4) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest or other claimant.

(5) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party or conditional sales vendor and thereby purchase the property for use to enforce this chapter.

History.
I.C., § 18-5623, as added by 2013, ch. 249, § 6, p. 601; am. 2014, ch. 97, § 2, p. 265.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 97, substituted "victims" for "victim's" in paragraph (3)(b)(ii)2.(C).

18-5624. Real property — Rights of third parties. — (1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to forfeiture, by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of this notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 18-5620, Idaho Code. The request shall be served in the same manner as complaints subject to Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity that may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) A co-owner or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed of trust or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged;

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used or had been used in any manner in violation of the provisions of section 18-5612, Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee or beneficiary of the real property, if any, up to the value of his interest in the real property;

(ii) The balance, if any, in the following order:

1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the crime victims compensation account as established in section 72-1009, Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

History.
I.C., § 18-5624, as added by 2013, ch. 249, § 7, p. 601; am. 2014, ch. 97, § 3, p. 265.

STATUTORY NOTES

Cross References.
Attorney general, § 67-1401 et seq.

Amendments.
The 2014 amendment, by ch. 97, substi-

tuted "victims" for "victim's" in paragraph (6)(a)(ii)2.

18-5625. Proportionality. — In issuing any order under the provisions of this chapter, the court shall make a determination that the property, or a portion thereof in the case of real property, was actually used in violation of the relevant provisions of this chapter. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this chapter.

History.
I.C., § 18-5625, as added by 2013, ch. 249, § 8, p. 601.

18-5626. Authority of the attorney general. — With respect to property ordered forfeited under the provisions of this chapter, the attorney general or appropriate prosecuting attorney is authorized to:

(1) Restore forfeited property to victims of a violation of relevant provisions of this chapter, or take any other action to protect the rights of innocent persons that is in the interest of justice and that is not inconsistent with the provisions of this chapter;

(2) Compromise claims arising under this chapter;

(3) Award compensation to persons providing information resulting in a forfeiture under this chapter; and

(4) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this chapter pending its disposition.

History.
I.C., § 18-5626, as added by 2013, ch. 249, § 9, p. 601.

STATUTORY NOTES

Cross References.
Attorney general, § 67-1401 et seq.

18-5627. Bar on intervention. — Except as provided in sections 18-5623 and 18-5624, Idaho Code, no party claiming an interest in property subject to forfeiture under this section may:

(1) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under the provisions of this chapter; or

(2) Commence an action at law or equity against the state of Idaho concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this chapter.

History.
I.C., § 18-5627, as added by 2013, ch. 249, § 10, p. 601.

18-5628. Jurisdiction — Depositions. — The district courts of the state of Idaho shall have jurisdiction over:

(1) Property for which forfeiture is sought that is within the state at the time the action is filed; or

(2) The interest of a co-owner or interest holder in the property if the co-owner or interest holder is subject to personal jurisdiction in this state.

In order to facilitate the identification and location of property declared forfeited after the entry of an order declaring property forfeited to the state of Idaho, the court may, upon application of the state of Idaho, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 27 of the Idaho rules of civil procedure.

History.
I.C., § 18-5628, as added by 2013, ch. 249, § 11, p. 601.

18-5629. Disposition of property. — On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. If the court orders a sale, the court shall designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

(1) Payment of reasonable expenses incurred in connection with the sale.

(2) Satisfaction of exempt interests in the order of their priority.

(3) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest-bearing account, subject to further proceedings under the provisions of this chapter.

When property is forfeited under this chapter, the attorney general or appropriate prosecuting attorney may:

(a) Retain it for official use; and/or

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public, pursuant to section 18-5623 or 18-5624, Idaho Code.

History.
I.C., § 18-5629, as added by 2013, ch. 249, § 12, p. 601.

STATUTORY NOTES

Cross References.
Attorney general, § 67-1401 et seq.

18-5630. Forfeiture of substitute property. — If any of the property described in section 18-5612, Idaho Code, as a result of any act or omission of the defendant:

(1) Cannot be located upon the exercise of due diligence;

(2) Has been transferred or sold to, or deposited with, a third party;

(3) Has been placed beyond the jurisdiction of the court;

(4) Has been substantially diminished in value; or

(5) Has been commingled with other property that cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in section 18-5612, Idaho Code.

History.
I.C., § 18-5630, as added by 2013, ch. 249, § 13, p. 601.

18-5631. Construction. — The provisions of this chapter shall be liberally construed to effectuate its remedial purposes.

History.
I.C., § 18-5631, as added by 2013, ch. 249, § 14, p. 601.

CHAPTER 57

PUBLIC FUNDS AND SECURITIES

SECTION.
18-5701. Misuse of public moneys by public officers and public employees.
18-5702. Grading and punishment for misuse of funds.
18-5703. Definitions.
18-5704. Failure of officer to account for fines or costs. [Repealed.]

18-5701. Misuse of public moneys by public officers and public employees. — No public officer or public employee shall:

(1) Without authority of law, appropriate public moneys or any portion thereof to his own use, or to the use of another; or

(2) Loan public moneys or any portion thereof; or, having the possession or control of any public moneys, make a profit, directly or indirectly out of public moneys, or use public moneys for any purpose not authorized by law; or

(3) Fail to keep public moneys in his possession until disbursed or paid out by authority of law when legally required to do so; or

(4) Deposit public moneys or any portion thereof in any bank, or with any banker or other person, otherwise than on special deposit, or as otherwise authorized by law; or

(5) Change or convert public moneys or any portion thereof from coin into currency, or from currency into coin or other currency, without authority of law; or

(6) Knowingly keep any false account, or make any false entry or erasure in any account of or relating to public moneys; or fraudulently alter, falsify, conceal, destroy or obliterate any such account; or

(7) Willfully refuse or omit to pay over, on demand, any public moneys in his hands, upon the presentation of a draft, order or warrant drawn upon such public moneys by competent authority; or

(8) Willfully omit to transfer public moneys when such transfer is required by law; or

(9) Willfully omit or refuse to pay over to any public officer, employee or person authorized by law to receive the same, any public moneys received by him under any duty imposed by law so to pay over the same; or

(10) Knowingly use any public moneys, or financial transaction card, financial transaction card account number or credit account issued to or for the benefit of any governmental entity to make any purchase, loan, guarantee or advance of moneys for any personal purpose or for any purpose other than for the use or benefit of the governmental entity.

History.

I.C., § 18-5701, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 156, § 1, p. 471; am. 2008, ch. 56, § 1, p. 143.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 156, added subsection (11); and inserted "year" following "one (1)" in the last paragraph.

The 2008 amendment, by ch. 56, rewrote the section catchline, which formerly read: "Misuse of public money by officers"; throughout the section, inserted references to "public moneys"; rewrote the introductory paragraph, which formerly read: "Each officer of this state, or of any county, city, town or district of this state, and every other person charged with the receipt, safekeeping, transfer or disbursement of public moneys, who:"; in subsection (2), inserted "directly or indirectly"; in subsection (3), added "when legally required to do so"; in subsection (9), inserted "public" and "employee" preceding and following "officer," respectively; in subsection (10), twice substituted "governmental entity" for "public entity, office or agency"; and deleted the last paragraph, which read: "Is punishable by imprisonment in the state prison for not less than one (1) year nor more than ten (10) years, and is disqualified from holding any office in this state."

Effective Dates.

Section 6 of S.L. 2008, ch. 56 declared an emergency. Approved March 3, 2008.

JUDICIAL DECISIONS

Police Officer.

Dismissal of charge of misuse of public money was affirmed because defendant, a police officer, was not within the class of persons who were charged with the receipt, safe keeping, transfer or disbursement of public moneys. State v. Pruett, 143 Idaho 151, 139 P.3d 753 (Ct. App. 2006).

18-5702. Grading and punishment for misuse of funds. — (1) Any public employee who is not charged with the receipt, safekeeping or disbursement of public moneys and who misuses public moneys in violation of section 18-5701, Idaho Code, is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one (1) year, or by both, if the amount of public moneys misused is less than three hundred dollars ($300).

(2) Any public officer or public employee charged with the receipt, safekeeping or disbursement of public moneys, who misuses public moneys in violation of section 18-5701, Idaho Code, is guilty of a felony punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in

the state prison for not more than five (5) years, or by both, if the amount of public moneys misused is less than three hundred dollars ($300).

(3) Except as otherwise provided in subsections (1) and (2) of this section, any public officer or public employee who misuses public moneys in violation of section 18-5701, Idaho Code, is guilty of a felony punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison for not less than one (1) year nor more than fourteen (14) years, or by both.

(4)(a) When any series of violations of section 18-5701, Idaho Code, comprised of separate incidents of misuse of public moneys in amounts less than three hundred dollars ($300) are part of a common scheme or plan, the incidents may be aggregated in one (1) count and the sum of the value of all of the incidents shall be the value considered in determining whether the amount exceeds three hundred dollars ($300).

(b) Any public officer or public employee who pleads guilty to or is found guilty of a violation of section 18-5701, Idaho Code, more than one (1) time, irrespective of the form of the judgment(s) or withheld judgment(s), and who would otherwise be subject to a lesser punishment under subsection (1) or (2) of this section is guilty of a felony punishable as provided in subsection (3) of this section.

(5) In addition to any penalty imposed in this section, any public officer or public employee who pleads guilty to or is found guilty of a violation of section 18-5701, Idaho Code, irrespective of the form of the judgment(s) or withheld judgment(s) shall:

(a) Be terminated for cause from the public office or employment subject to any procedures applicable to such termination; and

(b) Make restitution of any public moneys misused, and any profits made therefrom, as ordered by the court; and

(c) Notwithstanding section 18-310, Idaho Code, and except as otherwise provided by law, be disqualified from holding any position as a public officer or public employee if such position is charged with the receipt, safekeeping or disbursement of public moneys; and

(d) In the discretion of the court, and unless otherwise prohibited by law, be ordered to apply for distribution of any retirement moneys held by any entity on behalf of the person, in order that such moneys shall be used to make restitution to the public entity or its insurer, unless other funds are otherwise available.

History.

I.C., § 18-5702, as added by 1972, ch. 336, § 1, p. 844; am. 2008, ch. 56, § 2, p. 144; am. 2008, ch. 238, § 1, p. 718.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 56, rewrote the section catchline, which formerly read: "Failure to keep and pay over money"; and rewrote the section, which formerly read: "Every officer charged with the receipt, safe keeping or disbursement of public moneys who neglects or fails to keep and pay over the same in the manner prescribed by law, is guilty of felony."

The 2008 amendment, by ch. 238, added paragraph (5)(d).

Effective Dates.

Section 6 of S.L. 2008, ch. 56 declared an emergency. Approved March 3, 2008.

Section 2 of S.L. 2008, ch. 238 declared an emergency. Approved March 25, 2008.

18-5703. Definitions. — As used in this chapter:

(1) "Financial transaction card" means:

(a) Any instrument or device known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card or by any other name issued by the issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the cardholder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such a person or business; or

(b) Any instrument or device used in providing the cardholder access to a demand deposit account or a time deposit account for the purpose of making deposits of money or checks therein, or withdrawing funds in the form of money, money orders, or traveler's checks or other representative of value therefrom or transferring funds from any demand account or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing therein.

(2) "Financial transaction card account number" means the account number assigned by an issuer to a financial transaction card to identify and account for transactions involving that financial transaction card.

(3) "Governmental entity" means:

(a) The state of Idaho, including all branches, departments, divisions, agencies, boards, commissions and other governmental bodies of the state; and

(b) Counties, cities, districts and all other political subdivisions of the state of Idaho.

(4) "Public employee" means any person who is not a public officer and is employed by a governmental entity.

(5) "Public moneys" includes all bonds and evidences of indebtedness, fees, fines, forfeitures, and all other moneys belonging to or in the charge of a governmental entity or held by a public officer or public employee in his official capacity, and all financial transaction cards, financial transaction card account numbers and credit accounts issued to or for the benefit of the governmental entity.

(6) "Public officer" means any person holding public office of a governmental entity:

(a) As an elected official, by virtue of an election process, including persons appointed to a vacant elected office; or

(b) As an appointed official by virtue of a formal appointment as required by law.

History.

I.C., § 18-5703, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 156, § 2, p. 471; am. 2008, ch. 56, § 3, p. 145.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 156, rewrote the section, which formerly read: "**Public moneys defined.** The phrase 'public moneys' as used in the two preceding sections includes all bonds and evidences of indebtedness, and all moneys belonging to the state, or any city, county, town or district therein, and all moneys, bonds and evidences of indebtedness received or held by state, county, district, city or town officers in their official capacity."

The 2008 amendment, by ch. 56, rewrote subsection (3), which formerly was the definition for "Officer of this state, or any county, city, town or district of this state"; added subsection (4); rewrote subsection (5), which formerly read: "Public moneys includes all bonds and evidences of indebtedness, and all moneys belonging to the state or any city, county, town or district therein, all financial transaction cards, financial transaction card account numbers and credit accounts issued to or for the benefit of the state or any city, county, town or district therein, and all moneys, bonds and evidences of indebtedness received or held by state, county, district, city or town officers in their official capacity"; and added subsection (6).

Effective Dates.

Section 6 of S.L. 2008, ch. 56 declared an emergency. Approved March 3, 2008.

18-5704. Failure of officer to account for fines or costs. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 18-5704, as added by 1972, ch. 336, § 1, p. 844, was repealed by S.L. 2008, ch. 56, § 4, effective March 3, 2008.

CHAPTER 61

RAPE

SECTION.
18-6101. Rape defined.
18-6107. Rape of spouse.
18-6108. Male rape.
18-6110. Sexual contact with a prisoner.

18-6101. Rape defined. — Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under any one (1) of the following circumstances:

(1) Where the female is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.

(2) Where the female is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the female.

(3) Where she is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.

(4) Where she resists but her resistance is overcome by force or violence.

(5) Where she is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.

(6) Where she is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

(a) Was unconscious or asleep;

(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(7) Where she submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

(8) Where she submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.

(9) Where she submits under the belief, instilled by the actor, that if she does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against her; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the female, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the female.

History.

I.C., § 18-6101, as added by 1972, ch. 336, § 1, p. 844; am. 1977, ch. 208, § 1, p. 573; am. 1994, ch. 83, § 1, p. 197; am. 1994, ch. 135, § 1, p. 307; am. 2000, ch. 218, § 1, p. 606; am. 2003, ch. 280, § 1, p. 756; am. 2010, ch. 235, § 7, p. 542; am. 2010, ch. 352, § 1, p. 920; am. 2011, ch. 27, § 1, p. 67.

STATUTORY NOTES

Prior Laws.

Former § 18-6101, which comprised R.S., § 6765; 1895, P. 19, § 1; reen. 1899, P. 167, § 1; reen. R.C. & C.L., § 6765; C.S., § 8262; I.C.A., § 17-1601, was repealed by S.L. 1971, ch. 143, § 5, effective January 1, 1972, and the present section added by S.L. 1972, ch. 336, § 1 in the same words as the section prior to its repeal.

Amendments.

This section was amended by two 2010 acts which appear to be compatible and have been compiled together.

The 2010 amendment, by ch. 235, substituted "mental disability" for "mental deficiency" in subsection (3).

The 2010 amendment, by ch. 352, in subsection (1), substituted "sixteen (16) years" for "eighteen (18) years" and added "and the perpetrator is eighteen (18) years of age or older"; added subsection (2) and redesignated the subsequent subsections accordingly; and added the last paragraph.

The 2011 amendment, by ch. 27, added subsection (8) and redesignated former subsection (8) as present subsection (9).

JUDICIAL DECISIONS

Analysis

Constitutionality.
Evidence.
Force.
Harmless error.
Instructions.
Prosecutional misconduct.

Resistance.
Sentence.

Constitutionality.

This section does not violate the equal protection provision in Idaho Const., Art. I, § 2. State v. Joslin, 145 Idaho 75, 175 P.3d 764 (2007).

Evidence.

In a statutory rape case, the evidence was sufficient to support the jury's verdict, as the victim's testimony and defendant's confession provided evidence upon which a reasonable trier of fact could have found that defendant penetrated the victim's vaginal opening with his penis. State v. Joslin, 145 Idaho 75, 175 P.3d 764 (2007).

Force.

In the context of forcible rape, the extrinsic force standard applies in Idaho. Some force beyond that which is inherent in the sexual act is required for a charge of forcible rape. State v. Jones, 154 Idaho 412, 299 P.3d 219 (2013).

Evidence was sufficient to sustain a forcible rape conviction, because defendant used more force than was inherent in the sexual act; his use of his weight to trap the victim's hands, and effectively forestall any struggle, seemed less "incidental" to sex and far more like force employed to overcome her resistance. State v. Jones, 154 Idaho 412, 299 P.3d 219 (2013).

Harmless Error.

Defendant conviction for rape was affirmed, even though trial court erred in allowing the nurse who performed rape kit examination to answer a jury question about whether it was unusual for rape victims to have no external physical injuries. The error was harmless where her later testimony showed she was only answering in the narrow context of her own personal experience, and the overwhelming evidence against defendant would have led the jury to the same result regardless. State v. Gutierrez, 143 Idaho 289, 141 P.3d 1158 (Ct. App. 2006).

Instructions.

In a statutory rape case, the district court did not abuse its discretion in refusing to instruct the jury further on the definition of vaginal opening, where two physicians had explained for the jury where the vaginal opening was and where the labia and hymen were in relation to the vaginal opening, the victim testified that defendant penetrated her vagina with his penis, and defendant admitted to a police officer that he had done so. State v. Joslin, 145 Idaho 75, 175 P.3d 764 (2007).

Prosecutional Misconduct.

Defendant is entitled to a fair trial, not an error-free trial. Where there was substantial evidence through testimony as well as physical evidence that defendant committed the assault, where the prosecution's improper reference to defendant's silence occurred as part of a series of permissible questions related to defendant's credibility, and where the prosecutor did not dwell on defendant's post-*Miranda* silence, the jury would have found defendant guilty even absent the prosecutor's passing question implicating defendant's post-*Miranda* silence. State v. Cobell, 148 Idaho 349, 223 P.3d 291 (Ct. App. 2009).

Resistance.

Evidence was insufficient to sustain a rape conviction because the complainant never verbally communicated to defendant that she did not want to engage in sexual activity, nor was there evidence that he used force or violence to overcome any resistance. State v. Jones, 154 Idaho 412, 299 P.3d 219 (2013).

"Resist," as it is used in this section, does not require that the victim have physically resisted. A victim need not resist to the utmost of her ability. The importance of resistance by the victim is simply to show two elements of the crime—the assailant's intent to use force in order to have sexual intercourse and the victim's non-consent; whether the evidence establishes the element of resistance is a fact-sensitive determination based on the totality of the circumstances, including the victim's words and conduct. State v. Jones, 154 Idaho 412, 299 P.3d 219 (2013).

This section does not require that rape victims resist to their utmost physical ability. Verbal resistance is sufficient resistance to substantiate a charge of forcible rape. State v. Jones, 154 Idaho 412, 299 P.3d 219 (2013).

Whether the evidence establishes the element of resistance is a fact-sensitive determination based on the totality of the circumstances, including the victim's words and conduct. State v. Jones, 154 Idaho 412, 299 P.3d 219 (2013).

Sentence.

Denial of a motion for postconviction relief was reversed because defendant had the right to counsel during a psychosexual evaluation, the Fifth Amendment was implicated due to the fact that punishment could have been enhanced for statements made, and counsel was ineffective for failing to advise the inmate of his Fifth Amendment rights where the sentencing court relied heavily on the evaluation in imposing a life sentence for rape. Estrada v. State, 143 Idaho 558, 149 P.3d 833 (2006), cert. denied, 552 U.S. 811, 128 S. Ct. 51, 169 L. Ed. 2d 13 (2007).

Trial court properly weighed the mitigating factors in defendant's case and did not abuse its discretion in imposing concurrent unified life sentences, with minimum periods of confinement of 10 years, for the crimes of rape and penetration by a foreign object. State v. Cobell, 148 Idaho 349, 223 P.3d 291 (Ct. App. 2009).

Defendant's *Alford* plea to charges under this section reflected his lack of acceptance of responsibility for his actions and indicated that he was unsuitable for rehabilitation at the time of sentencing. State v. Baker, 153 Idaho 692, 290 P.3d 1284 (Ct. App. 2012).

Cited in: State v. Ball, 149 Idaho 658, 239 P.3d 456 (Ct. App. 2010); State v. Elias, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 61 (Ct. App. July 12, 2013).

RESEARCH REFERENCES

A.L.R. — Offense of rape after withdrawal of consent. 33 A.L.R.6th 353.

Comment note: Construction and application of "crime of violence" provision of U.S.S.G. § 2L1.2 pertaining to unlawfully entering or remaining in the United States after commission of felony offense. 68 A.L.R. Fed. 2d 55.

18-6105. Evidence of previous sexual conduct of prosecuting witness.

RESEARCH REFERENCES

A.L.R. — Offense of rape after withdrawal of consent. 33 A.L.R.6th 353.

18-6107. Rape of spouse. — No person shall be convicted of rape for any act or acts with that person's spouse, except under the circumstances cited in subsections (4) and (5) of section 18-6101, Idaho Code.

History.

I.C., § 18-6107, as added by 1977, ch. 208, § 4, p. 573; am. 1989, ch. 351, § 1, p. 879; am. 2010, ch. 352, § 2, p. 920.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 352, substituted "subsections (4) and (5)" for "paragraphs 3. and 4."

18-6108. Male rape. — Male rape is defined as the penetration, however slight, of the oral or anal opening of another male, with the perpetrator's penis, for the purpose of sexual arousal, gratification or abuse, under any of the following circumstances:

(1) Where the victim is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.

(2) Where the victim is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the victim.

(3) Where the victim is incapable, through any unsoundness of mind, whether temporary or permanent, of giving consent.

(4) Where the victim resists but his resistance is overcome by force or violence.

(5) Where the victim is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution.

(6) Where the victim is prevented from resistance by the use of any

intoxicating, narcotic, or anaesthetic substance administered by or with the privity of the accused.

(7) Where the victim is at the time unconscious of the nature of the act, and this is known to the accused.

The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim.

History.

I.C., § 18-6108, as added by 1990, ch. 291, § 2, p. 811; am. 1993, ch. 263, § 1, p. 895; am. 1994, ch. 135, § 2, p. 307; am. 2010, ch. 352, § 3, p. 920.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 352, added subsections (1) and (2), and redesignated the subsequent subsections accordingly; and added the last paragraph.

18-6110. Sexual contact with a prisoner. — (1) It is a felony for any employee of the Idaho department of correction, Idaho department of juvenile corrections or any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with a prisoner or juvenile offender, not their spouse, whether an in-state or out-of-state prisoner or juvenile offender, as those terms are defined in section 18-101A, Idaho Code.

(2) It is a felony for any supervising officer, as that term is defined in section 18-101A, Idaho Code, to knowingly have sexual contact with any parolee or probationer, as those terms are defined in section 18-101A, Idaho Code, who is not the person's spouse.

(3) For the purposes of this section "sexual contact" means sexual intercourse, genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact or oral-anal contact, between persons of the same or opposite sex.

(4) Any person found guilty of sexual contact with a prisoner or juvenile offender is punishable by imprisonment in the state prison for a term not to exceed life.

History.

I.C., § 18-6110, as added by 1993, ch. 222, § 1, p. 759; am. 2000, ch. 272, § 9, p. 786; am. 2003, ch. 37, § 1, p. 156; am. 2005, ch. 177, § 2, p. 547; am. 2008, ch. 60, § 2, p. 152; am. 2009, ch. 116, § 1, p. 373.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 60, added the subsection designations; in subsection (1), inserted "Idaho department of juvenile corrections" and twice inserted "or juvenile offender"; added subsection (2); and in subsection (4), inserted "or juvenile offender."

The 2009 amendment, by ch. 116, inserted "contact" throughout subsection (3), except within the quoted term.

CHAPTER 64

RIOT, ROUT, UNLAWFUL ASSEMBLY, PRIZE FIGHTING, DISTURBING PEACE

SECTION.
18-6409. Disturbing the peace.

18-6404. Unlawful assembly defined.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes and municipal ordinances proscribing failure or refusal to obey police officer's order to move on, or disperse, on street, as disorderly conduct. 52 A.L.R.6th 125.

18-6409. Disturbing the peace. — (1) Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood, family or person, by loud or unusual noise, or by tumultuous or offensive conduct, or by threatening, traducing, quarreling, challenging to fight or fighting, or fires any gun or pistol, or uses any vulgar, profane or indecent language within the presence or hearing of children, in a loud and boisterous manner, is guilty of a misdemeanor.

(2) Every person who maliciously and willfully disturbs the dignity or reverential nature of any funeral, memorial service, funeral procession, burial ceremony or viewing of a deceased person is guilty of a misdemeanor.

History.
I.C., § 18-6409, as added by 1972, ch. 336, § 1, p. 844; am. 1972, ch. 381, § 14, p. 1102; am. 1994, ch. 167, § 4, p. 374; am. 2007, ch. 130, § 1, p. 387.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 130, added the subsection (1) designation and subsection (2).

JUDICIAL DECISIONS

Constitutionality.
Editor's Note: *State v. Poe*, cited in an annotation under this heading in the bound volume is reported at 139 Idaho 885, 88 P.3d 704.

Cited in: Frost v. Robertson, 2009 U.S. Dist. LEXIS 24006 (D. Idaho 2009).

18-6410. Assembly to disturb peace — Refusal to disperse.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutes and municipal ordinances proscribing failure or refusal to obey police officer's order to move on, or disperse, on street, as disorderly conduct. 52 A.L.R.6th 125.

CHAPTER 65

ROBBERY

18-6501. Robbery defined.

JUDICIAL DECISIONS

ANALYSIS

Elements of offense.
Evidence.
—Sufficient.
Prosecutorial misconduct.
Venue.

Elements of Offense.

State's evidence was sufficient to support a reasonable inference that the defendant's intent was to obtain money by frightening a store clerk where it showed that he was alone in a store with the female clerk, he was a large male, and he insistently repeated his demand that she empty the till. State v. Beebe, 145 Idaho 570, 181 P.3d 496 (Ct. App. 2007).

Evidence.

—Sufficient.

Evidence was sufficient to support defendant's convictions as an accomplice to aggravated battery, robbery, and burglary. Even though defendant did not actively participate in the actual robbery, he knowingly supplied a loaded gun for use in the robbery, knew about the money that the victim was saving, and exerted influence over his codefendants to perform the deed. State v. Mitchell, 146 Idaho 378, 195 P.3d 737 (Ct. App. 2008).

Prosecutorial Misconduct.

Prosecutor's misrepresentation that defendant had repeatedly, persistently, and consistently confessed to having the disputed intent to commit the crime was prosecutorial misconduct where the defense was based solely on the premise that the severely mentally ill defendant did not harbor the intent that was an element of the crime. State v. Beebe, 145 Idaho 570, 181 P.3d 496 (Ct. App. 2007).

Prosecutor's misconduct was not harmless error where it was reasonably possible that the jurors would have acquitted the defendant of attempted robbery if they had not been exposed to the prosecutor's misrepresentation of the testimony, mischaracterization of the defense theory as a claim of entitlement for the mentally ill to commit crimes, and references to matters that should not have been factored into the jury's determination of guilt or innocence. State v. Beebe, 145 Idaho 570, 181 P.3d 496 (Ct. App. 2007).

RESEARCH REFERENCES

A.L.R. — Robbery: Identification of victim as person named in indictment or information. 4 A.L.R.6th 577.

Comment note: Construction and application of "crime of violence" provision of U.S.S.G. § 2L1.2 pertaining to unlawfully entering or remaining in the United States after commission of felony offense. 68 A.L.R. Fed. 2d 55.

CHAPTER 66

SEX CRIMES

SECTION.
18-6602. Incest.
18-6608. Forcible sexual penetration by use of foreign object.
18-6609. Crime of video voyeurism.

18-6602. Incest. — Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who

intermarry with each other, or who commit fornication or adultery with each other, are punishable by imprisonment in the state prison for a term not to exceed life.

History.
I.C., § 18-6602, as added by 1972, ch. 336, § 1, p. 844; am. 2003, ch. 202, § 1, p. 543; am. 2006, ch. 178, § 9, p. 545.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 178, substituted "for a term not to exceed life" for "not exceeding twenty-five (25) years."

Effective Dates.
Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

18-6605. Crime against nature — Punishment.

JUDICIAL DECISIONS

Crime Against Nature.
Infamous crime against nature statute was not unconstitutional as applied to defendant who had fellated male adult with Down Syndrome in sauna at local gym. There was ample support from the record demonstrating that the victim was unable to consent or did not consent, and that the conduct occurred in public. State v. Cook, 146 Idaho 261, 192 P.3d 1085 (Ct. App. 2008).

18-6608. Forcible sexual penetration by use of foreign object. — Every person who, for the purpose of sexual arousal, gratification or abuse, causes the penetration, however slight, of the genital or anal opening of another person, by any object, instrument or device:

(1) Against the victim's will by:

(a) Use of force or violence; or

(b) Duress; or

(c) Threats of immediate and great bodily harm, accompanied by apparent power of execution; or

(2) Where the victim is incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent; or

(3) Where the victim is prevented from resistance by any intoxicating, narcotic or anesthetic substance; or

(4) Where the victim is at the time unconscious of the nature of the act because the victim:

(a) Was unconscious or asleep; or

(b) Was not aware, knowing, perceiving or cognizant that the act occurred shall be guilty of a felony and shall be punished by imprisonment in the state prison for not more than life.

History.
I.C., § 18-6608, as added by 1983, ch. 176, § 1, p. 484; am. 2002, ch. 360, § 1, p. 1018; am. 2014, ch. 165, § 1, p. 467.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 165, added the subsection and paragraph designations and inserted present subsection (4).

JUDICIAL DECISIONS

Analysis

Force.
Prosecutional misconduct.
Sentence.

Force.

Surrounding circumstances of the offense did not constitute force within the meaning of this section, as defendant did not have a weapon, did not verbally threaten the victim, and did not act violently; and no penetration occurred after the victim was cognizant. State v. Elias, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 61 (Ct. App. July 12, 2013).

This section requires both an act that is against the will of the victim and the use of force; however, the force inherent in the penetration itself cannot, alone, be sufficient to fulfill both elements to sustain a conviction. State v. Elias, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 61 (Ct. App. July 12, 2013).

For purposes of this section, force does not include penetrating a victim while she is unconscious or asleep. State v. Elias, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 61 (Ct. App. July 12, 2013) (see 2014 amendment of this section).

Prosecutional Misconduct.

Defendant is entitled to a fair trial, not an error-free trial. Where there was substantial evidence through testimony as well as physical evidence that defendant committed the assault, where the prosecution's improper reference to defendant's silence occurred as part of a series of permissible questions related to defendant's credibility, and where the prosecutor did not dwell on defendant's post-*Miranda* silence, the jury would have found defendant guilty even absent the prosecutor's passing question implicating defendant's post-*Miranda* silence. State v. Cobell, 148 Idaho 349, 223 P.3d 291 (Ct. App. 2009).

Sentence.

In a case where 14-year-old defendant, without apparent provocation, bludgeoned his grandmother to death with a hammer and then inserted a finger into her sexual organ, numerous mental health professionals agreed that defendant suffered serious mental disorders, that the outcome of mental health treatment was not predictable, and that defendant needed to be confined because he presented a danger to others and was at risk of committing more acts of violence; trial court did not abuse its discretion in sentencing defendant to a unified life sentence with a 25 year determinate term for the sexual penetration conviction. State v. Steele, 141 Idaho 380, 109 P.3d 1122 (Ct. App. 2005).

Even though defendant's guilty plea for violating this section was set aside and dismissed under § 19-2604(1), he still had to meet the requirements of § 18-8310 in order to be released from the sex offender registry; because he could not do so, his motion for release from the registry was properly denied. State v. Robinson, 143 Idaho 306, 142 P.3d 729 (2006).

Trial court properly weighed the mitigating factors in defendant's case and did not abuse its discretion in imposing concurrent unified life sentences, with minimum periods of confinement of 10 years, for the crimes of rape and penetration by a foreign object. State v. Cobell, 148 Idaho 349, 223 P.3d 291 (Ct. App. 2009).

18-6609. Crime of video voyeurism. — (1) As used in this section:

(a) "Broadcast" means the electronic transmittal of a visual image with the intent that it be viewed by a person or persons.

(b) "Disseminate" means to make available by any means to any person.

(c) "Imaging device" means any instrument capable of recording, storing, viewing or transmitting visual images.

(d) "Intimate areas" means the buttocks, genitals or genital areas of males or females, and the breast area of females.

(e) "Person" means any natural person, corporation, partnership, firm, association, joint venture or any other recognized legal entity or any agent or servant thereof.

(f) "Place where a person has a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he could undress, be undressed or engage in sexual activity in privacy, without

concern that he is being viewed, photographed, filmed or otherwise recorded by an imaging device; or

(ii) A place where a person might reasonably expect to be safe from casual or hostile surveillance by an imaging device; or

(iii) Any public place where a person, by taking reasonable steps to conceal intimate areas, should be free from the viewing, recording, storing or transmitting of images obtained by imaging devices designed to overcome the barriers created by a person's covering of intimate areas.

(g) "Publish" means to:

(i) Disseminate with the intent that such image or images be made available by any means to any person; or

(ii) Disseminate with the intent that such images be sold by another person; or

(iii) Post, present, display, exhibit, circulate, advertise or allow access by any means so as to make an image or images available to the public; or

(iv) Disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means and to make such image or images available to the public.

(h) "Sell" means to disseminate to another person, or to publish, in exchange for something of value.

(2) A person is guilty of video voyeurism when:

(a) With the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of such person or another person, or for his own or another person's lascivious entertainment or satisfaction of prurient interest, or for the purpose of sexually degrading or abusing any other person, he uses, installs or permits the use or installation of an imaging device at a place where a person would have a reasonable expectation of privacy, without the knowledge or consent of the person using such place; or

(b) He either intentionally or with reckless disregard disseminates, publishes or sells or conspires to disseminate, publish or sell any image or images of the intimate areas of another person or persons without the consent of such other person or persons and he knows or reasonably should have known that one (1) or both parties agreed or understood that the images should remain private.

(3) A violation of this section is a felony.

(4) This section does not apply to an interactive computer service, as defined in 47 U.S.C. section 230(f)(2), an information service, as defined in 47 U.S.C. section 153 or a telecommunication service, as defined in section 61-121(2) or 62-603(13), Idaho Code, for content provided by another person, unless the provider intentionally aids or abets video voyeurism.

History.

I.C., § 18-6609, as added by 2004, ch. 122, § 1, p. 410; am. 2014, ch. 173, § 1, p. 477.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 173, in subsection (2), combined the former introductory paragraph and former paragraph (a) into present paragraph (a) and rewrote paragraph (b), which formerly read: "He intentionally disseminates, publishes or sells any image or images of the intimate areas of another person or persons without the consent of such other person or persons and with knowledge that such image or images were obtained with the intent set forth above"; and added subsection (4).

JUDICIAL DECISIONS

Analysis

Probable cause.
Search and seizure.

Probable Cause.

Prosecution alleged that defendant violated this section based on the theory that a previously recorded video was "obtained" when editing and captions were added with the intent to degrade or abuse the victim; because the State limited itself to this theory, the trial court properly limited its review for probable cause to the prosecution's theory. State v. McLellan, 154 Idaho 77, 294 P.3d 203 (Ct. App. 2013).

Search and Seizure.

Where defendant pled guilty to video voyeurism, his motion to suppress evidence of pornographic images and inappropriate videos found on the laptop computer he shared with his former wife was properly denied. Because the computer did not have any type of personal restrictions, the wife had free access to the computer and its files; she possessed the actual authority to consent to a police search of the computer. State v. Aschinger, 149 Idaho 53, 232 P.3d 831 (Ct. App. 2009).

RESEARCH REFERENCES

A.L.R. — Criminal prosecution of video or photographic voyeurism. 120 A.L.R.5th 337.

CHAPTER 67

COMMUNICATIONS SECURITY

SECTION.
18-6711A. False alarms — Complaints — Reports — Penalties — Civil damages.
18-6713. Theft of telecommunication services.

18-6705. Prohibition of use as evidence of intercepted wire, electronic or oral communications.

JUDICIAL DECISIONS

Admissibility.

In child abuse prosecution, wrongfully recorded telephone conversation between victim and victim's mother was inadmissible. State v. Hensley, 145 Idaho 852, 187 P.3d 1227 (2008), overruled on other grounds, Verska v. St. Alphonsus Med. Ctr., 151 Idaho 889, 265 P.3d 502 (2011).

18-6711A. False alarms — Complaints — Reports — Penalties — Civil damages. — (a) Any person calling the number "911" for the purpose of making a false alarm or complaint and reporting false information which

could or does result in the emergency response of any firefighting, police, medical or other emergency services shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to a fine of not to exceed one thousand dollars ($1,000) or to a term of not to exceed one (1) year in the county jail, or to both such fine and imprisonment.

(b) In addition to the criminal penalties for violation of the provisions of this section, civil damages may be recovered from the person so convicted in an amount of three (3) times the amount necessary to compensate or reimburse the complainant for costs incurred, losses sustained or other damages suffered in receiving, acting upon or responding to the false alarm, complaint or report. If the person so convicted is under the age of eighteen (18) years of age, the parent having legal custody of the minor may be jointly and severally liable with the minor for such civil damages as are imposed. Recovery from the parents shall not be limited by any other provision of law which limits the liability of a parent for the tortious or criminal conduct of a minor. A parent not having legal custody of the minor shall not be liable for civil damages imposed hereunder.

History.
I.C., § 18-6711A, as added by 1990, ch. 133, § 1, p. 306; am. 2005, ch. 359, § 10, p. 1133; am. 2012, ch. 257, § 3, p. 709.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 257, deleted "or legal guardian" or "guardian" following "parent" or "parents" in four places in subsection (b).

18-6713. Theft of telecommunication services. — (1) As used in this section:

(a) "Clone cellular telephone" or "counterfeit cellular telephone" is a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

(b) "Cloning paraphernalia" means materials that, when possessed in combination, are capable of creating a cloned cellular telephone. These materials include: scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned phone with a false electronic serial number and mobile identification number combination, a computer containing such software and lists of electronic serial number and mobile identification number combinations.

(c) "Electronic serial number" means the unique number that was programmed into a cellular telephone by its manufacturer which is transmitted by the cellular phone and used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device.

(d) "EPROM" or "erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light.

(e) "Illegal telecommunications equipment" means any instrument, ap-

paratus, equipment, or device which is designed or adapted, and otherwise used or intended to be used for the theft of any telecommunication service or for concealing from any supplier of telecommunication service or lawful authority the existence, place of origin, use or destination of any telecommunication.

(f) "Intercept" means to electronically capture, record, reveal or otherwise access the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver of the signals, by means of any instrument, device or equipment.

(g) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(h) "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.

(i) "Telecommunication service" means a service which, in exchange for a pecuniary consideration, provides or offers to provide transmission of messages, signals, facsimiles, video images or other communication between persons who are physically separated from each other by means of telephone, telegraph, cable, wire, or the projection of energy without physical connection.

(2) It is unlawful intentionally to:

(a) Make illegal telecommunications equipment; or

(b) Sell, give, or furnish to another or advertise or offer for sale illegal telecommunications equipment; or

(c) Sell, give, or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using illegal telecommunications equipment; or

(d) Use or possess illegal telecommunications equipment.

(3) It is unlawful intentionally to:

(a) Make clone cellular telephones; or

(b) Sell, give or furnish to another or advertise or offer for sale clone cellular telephones; or

(c) Sell, give or furnish to another or advertise or offer for sale any plans or instructions for making, assembling, or using clone cellular telephones; or

(d) Use or possess illegal cloning paraphernalia; or

(e) Use a clone cellular telephone or counterfeit telephone to facilitate the commission of a felony.

(4) It is theft of telecommunications services to use, receive, or control telecommunications services without paying the pecuniary consideration regularly charged by the supplier of the telecommunication services used, received or controlled.

(a) Actual knowledge by the supplier of the telecommunication services that a person is or has been using, receiving or controlling the services shall not be a defense to the crime of theft of telecommunication services.

(5) A person who violates the provisions of subsection (2)(d) of this section commits a crime and shall be punished as follows:

(a) The first conviction shall be a misdemeanor, which shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment

in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

(b) Conviction of a second or subsequent violation shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(6) A person who violates the provisions of either subsection (2)(a), (b) or (c) of this section commits a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment.

(7) A person who violates the provisions of subsection (3) of this section commits a felony.

(8) In a prosecution for violation of the provisions of subsection (2), (3) or (4) of this section, the element of intent may be established by proof that the defendant obtained such services by any of the following means:

(a) By use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(b) Without the consent of the supplier of the telecommunication services, the installation, connection, or alteration of any equipment, cable, wire, antenna or facilities capable of either physically, inductively, acoustically, or electronically enabling a person to use, receive or control telecommunication services without paying the regular pecuniary charge;

(c) By any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(d) By making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise used or intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the use, existence, place of origin, or destination of any telecommunications.

(9) The supplier of telecommunication services which is directly affected by the commission of any of the acts prohibited under subsections (2), (3) and (4) of this section shall, regardless of whether there was a criminal conviction, have a civil cause of action against the person who commits any of the prohibited acts. The prevailing party shall be awarded all reasonable costs of litigation including, but not limited to, attorney's fees and court costs. If the supplier prevails, he shall recover additionally:

(a) Actual damages; or

(b) Liquidated damages of ten dollars ($10.00) per day for each day of the violation or five hundred dollars ($500), whichever is greater; or

(c) If actual damages are greater than five hundred dollars ($500), and, if proven, punitive damages.

(10) Nothing in this section shall be construed to make unlawful the interception or receipt by any person or the assisting, including the manufacture or sale, of such interception or receipt, of any satellite cable programs for private viewing as defined and specifically permitted under the "Cable Communications Policy Act of 1984."

History.
I.C., § 18-6713, as added by 1980, ch. 326, § 2, p. 832; am. 1985, ch. 32, § 1, p. 64; am. 1988, ch. 354, § 1, p. 1055; am. 1997, ch. 144, § 1, p. 417; am. 2005, ch. 359, § 11, p. 1133.

CHAPTER 68

TELEGRAPH, TELEPHONE AND ELECTRIC LINES

SECTION.
18-6801. Removal or obstruction of telephone or telegraph lines or equipment.

18-6801. Removal or obstruction of telephone or telegraph lines or equipment. — Every person who maliciously displaces, removes, injures or destroys any public telephone instrument or any part thereof or any equipment or facilities associated therewith, or who enters or breaks into any coin box associated therewith, or who willfully displaces, removes, injures or destroys any telegraph or telephone line, wire, cable, pole or conduit belonging to another or the material or property appurtenant thereto is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History.
I.C., § 18-6801, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 17, p. 216.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "three hundred dollars ($300)."

CHAPTER 69

IDAHO ANTI-CAMCORDER PIRACY ACT

SECTION.
18-6901. Short title.
18-6902. Definitions.
18-6903. Prohibition against piracy.
18-6904. Authorized actions — Immunity.
18-6905. Applicability.

18-6901. Short title. — This chapter shall be known and may be cited as the "Idaho Anti-Camcorder Piracy Act."

History.
I.C., § 18-6901, as added by 2005, ch. 239, § 1, p. 742.

18-6902. Definitions. — As used in this chapter:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

History.
I.C., § 18-6902, as added by 2005, ch. 239, § 1, p. 742.

18-6903. Prohibition against piracy. — Any person who, without the written consent of the motion picture theater owner, knowingly operates the audiovisual recording function of any device in a motion picture theater while a motion picture is being exhibited for the purpose of recording the motion picture being exhibited shall be guilty of a misdemeanor and upon conviction shall be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or shall be punished by both such fine and imprisonment.

History.
I.C., § 18-6903, as added by 2005, ch. 239, § 1, p. 742.

18-6904. Authorized actions — Immunity. — (1) The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee may request a person on his premises to place or keep in full view any audiovisual recording device or related item such person may have operated, or which the owner or lessee or authorized agent or employee of such owner or lessee has reason to believe he may have operated, in violation of the provisions of this chapter. No merchant shall be criminally or civilly liable on account of having made such a request.

(2) The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee, who has reason to believe that any audiovisual recording device or related item has been operated by a person in violation of this chapter and that he can recover such audiovisual recording device or related item by taking such a person into custody and detaining him may, for the purpose of attempting to effect such recovery or for the purpose of informing a peace officer of the circumstances of such detention, take the person into custody and detain him, in a reasonable manner and for a reasonable length of time.

History.
I.C., § 18-6904, as added by 2005, ch. 239, § 1, p. 742.

18-6905. Applicability. — (1) This chapter does not prevent any lawfully authorized investigative, law enforcement, protective, or intelligence-gathering employee or agent of the federal government, the state or a political subdivision of the state, from operating any audiovisual recording device in a motion picture theater as part of lawfully authorized investigative, law enforcement, protective, or intelligence-gathering activities.

(2) Nothing in this chapter shall prevent prosecution instead under other applicable law providing a greater penalty.

History.
I.C., § 18-6905, as added by 2005, ch. 239, § 1, p. 742.

CHAPTER 70

TRESPASS AND MALICIOUS INJURIES TO PROPERTY

SECTION.
18-7001. Malicious injury to property.
18-7008. Trespass — Acts constituting.
18-7011. Criminal trespass — Definition and punishment.
18-7020. Destroying lumber, poles, rafts, and vessels.
18-7031. Placing debris on public or private property a misdemeanor.
18-7042. Interference with agricultural production.

18-7001. Malicious injury to property. — (1) Except as otherwise provided in subsection (2) of this section, every person who maliciously injures or destroys any real or personal property not his own, or any jointly owned property without permission of the joint owner, or any property belonging to the community of the person's marriage, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor and shall be punishable by imprisonment in the county jail for up to one (1) year or a fine of not more than one thousand dollars ($1,000), or both.

(2) A person is guilty of a felony, and shall be punishable by imprisonment in the state prison for not less than one (1) year nor more than five (5) years, and may be fined not more than one thousand dollars ($1,000), or by both such fine and imprisonment, if:

(a) The damages caused by a violation of this section exceed one thousand dollars ($1,000) in value; or

(b) Any series of individual violations of this section are part of a common scheme or plan and are aggregated in one (1) count, and the damages from such violations when considered together exceed one thousand dollars ($1,000) in value.

History.
I.C., § 18-7001, as added by 1972, ch. 336, § 1, p. 844; am. 1973, ch. 186, § 1, p. 432; am. 1998, ch. 354, § 1, p. 1112; am. 2005, ch. 118, § 1, p. 378.

JUDICIAL DECISIONS

Malice.

Evidence was sufficient to sustain a juvenile defendant's adjudication for malicious injury to property because defendant intentionally set fire to property not his own (weeds in a vacant lot) and the fire spread to other property (an apartment complex and the personal property in the apartment). That was sufficient to show that defendant maliciously injured or destroyed such other property. State v. Doe (In re Doe), 144 Idaho 819, 172 P.3d 1094 (2007).

This section creates culpability for malicious injury to property only where the defendant's conduct causing the injury is accompanied by an intent to injure the property of another. State v. Skunkcap, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 55 (Ct. App. June 14, 2013).

Cited in: State v. Vargas, 152 Idaho 240, 268 P.3d 1192 (Ct. App. 2012).

18-7008. Trespass — Acts constituting. — A. Every person who willfully commits any trespass, by either:

1. Cutting down, destroying or injuring any kind of wood or timber belonging to another, standing or growing upon the lands of another; or

2. Carrying away any kind of wood or timber lying on such lands; or

3. Maliciously injuring or severing from the freehold of another, anything attached thereto, or the produce thereof; or

4. Digging, taking, or carrying away from any lot situated within the limits of any incorporated city, without the license of the owner or legal occupant thereof, any earth, soil or stone; or

5. Digging, taking, or carrying away from any land in any of the cities of the state, laid down on the map or plan of such city, or otherwise recognized or established as a street, alley, avenue, or park, without the license of the proper authorities, any earth, soil or stone; or

6. Willfully opening, tearing down, or otherwise destroying any fence on the enclosed land of another, or opening any gate, bar, or fence of another and willfully leaving it open, or using the corral or corrals of another without the permission of the owner; or

7. Willfully covering up or encumbering in any manner the land or city lot of another, without written permission from the owner or custodian thereof; or

8. Every person, except under landlord-tenant relationship, who, being first notified in writing, or verbally by the owner or authorized agent of the owner of real property, to immediately depart from the same and who refuses to so depart, or who, without permission or invitation, returns and enters said property within a year, after being so notified; or

9. Entering without permission of the owner or the owner's agent, upon the real property of another person which:

(a) Is posted with "No Trespassing" signs;

(b) Is posted with a minimum of one hundred (100) square inches of fluorescent orange, bright orange, blaze orange, safety orange or any similar high visibility shade of orange colored paint except that when metal fence posts are used, a minimum of eighteen (18) inches of the top of the post must be painted a high visibility shade of orange;

(c) Is posted with other notices of like meaning, spaced at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet along such real property; provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this section if said signs, paint or notices are posted at such points of access; or

(d) Is posted with a conspicuous sign where a public road enters the real property, through which or along which road the public has a right-of-way, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF (fill in relevant compass direction(s)) SIDE OF ROAD NEXT (fill in the distance) MILES," and which is posted with a conspicuous sign where the public road exits the real property stating words substantially similar to "LEAVING PRIVATE

PROPERTY." The postings shall be placed on the private real property. In lieu of posting the compass direction(s), a map depicting the area of private property may be displayed on the sign; or

10. Entering the property of another and, being unprovoked, intentionally and without the consent of the animal's owner, kills or injures a domestic animal not his own:

Is guilty of a misdemeanor.

B. Every person who while committing any trespass, intentionally and without consent of the animal's owner kills or injures a domestic animal of another, not including upland game birds or birds of any species not protected by law, shall be guilty of a misdemeanor. In addition to any other sentence of jail or a criminal fine imposed, a court may, for violation of this subsection or subsection A.10. of this section, impose a civil penalty in an amount up to double the value of the animal or for injuries sustained and payable to the owner of the animal.

History.

I.C., § 18-7008, as added by 1972, ch. 336, § 1, p. 844; am. 1976, ch. 154, § 1, p. 550; am. 1992, ch. 283, § 1, p. 874; am. 1999, ch. 106, § 1, p. 333; am. 2000, ch. 147, § 1, p. 375; am. 2013, ch. 150, § 1, p. 347; am. 2014, ch. 28, § 1, p. 39.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 150, in paragraph A.9., inserted "bright orange, blaze orange, safety orange or any similar high visibility shade of orange colored" and substituted "a minimum of eighteen (18) inches of the top of the post must be painted a high visibility shade of orange" for "the entire post must be painted fluorescent orange".

The 2014 amendment, by ch. 28, in paragraph A.9., inserted designations (a) through (c), inserted "Is posted with" at the beginning of paragraph (c) and added paragraph (d).

JUDICIAL DECISIONS

Constitutionality.

Subsection A(8) was not unconstitutionally overbroad as applied to defendant, because his exercise of free speech was not impinged: he was cited with trespass for his conduct of visiting the governor's office in violation of a notice banning him from the building, not for the content of the letter he delivered to the governor's office. State v. Pentico, 151 Idaho 906, 265 P.3d 519 (Ct. App. 2011).

Magistrate did not err by concluding that defendant was guilty of trespass under paragraph A(8), because the evidence showed that defendant was properly notified by an officer that he was no longer authorized to be at the third floor of the government building where the governor's office was temporarily located, which superseded any prior alleged permission or invitation of the governor, and he was, thereafter, physically present at that location within a year of such notice. State v. Pentico, 151 Idaho 906, 265 P.3d 519 (Ct. App. 2011).

18-7011. Criminal trespass — Definition and punishment. — (1) Any person who, without consent of the owner or person in charge of any lands which are inclosed by fences of any description sufficient to show the boundaries of the land inclosed, shall go upon such lands and shall leave open any gates on or about said premises, or who shall tear down or lay down any fencing, or who shall willfully remove, mutilate, damage or destroy any "No Trespassing" signs or markers, or who shall go through cultivated crops that have not been harvested, or who shall damage any

property thereon, or who without permission of the owner or the owner's agent enters the real property of another person where such real property:

(a) Is posted with "No Trespassing" signs;

(b) Is posted with a minimum of one hundred (100) square inches of fluorescent orange, bright orange, blaze orange, safety orange or any similar high visibility shade of orange colored paint except that when metal fence posts are used, a minimum of eighteen (18) inches of the top of the post must be painted a high visibility shade of orange;

(c) Is posted with other notices of like meaning, spaced at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet along such real property; provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this section if said signs, paint or notices are posted at such points of access; or

(d) Is posted with a conspicuous sign where a public road enters the real property, through which or along which road the public has a right-of-way, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF (fill in relevant compass direction(s)) SIDE OF ROAD NEXT (fill in the distance) MILES," and which is posted with a conspicuous sign where the public road exits the real property stating words substantially similar to "LEAVING PRIVATE PROPERTY." The postings shall be placed on the private real property. In lieu of posting the compass direction(s), a map depicting the area of private property may be displayed on the sign;

is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six (6) months or by a fine of not less than twenty-five dollars ($25.00) and not more than one thousand dollars ($1,000) or by both such fine and imprisonment.

As used in this subsection and in section 18-7008, Idaho Code: "enters," "entry" and "entering" mean going upon or over real property either in person or by causing any object, substance or force to go upon or over real property.

(2) No motor vehicle shall be willfully or intentionally driven into, upon, over or through any private land actively devoted to cultivated crops without the consent of the owner of the land or the tenant, lessee or agent of the owner of the land actively devoted to cultivated crops. Violation of the provisions of this section shall be a misdemeanor. For the purpose of this subsection, motor vehicle shall be defined as set forth in sections 49-114 and 49-123, Idaho Code. Land actively devoted to cultivated crops shall be defined as land that is used to produce field crops including, but not limited to, grains, feed crops, legumes, fruits and vegetables.

History.

I.C., § 18-7011, as added by 1972, ch. 336, § 1, p. 844; am. 1976, ch. 154, § 2, p. 550; am. 1984, ch. 37, § 1, p. 63; am. 1984, ch. 55, § 2, p. 94; am. 1988, ch. 265, § 561, p. 549; am. 2005, ch. 359, § 12, p. 1133; am. 2014, ch. 28, § 2, p. 39.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 28, in subsection (1), deleted "is posted with 'No Trespassing' signs or other notices of like meaning spaced at intervals of not less than one (1) notice per six hundred sixty (660) feet along such real property" at the end of the present introductory language, inserted paragraphs (a) through (d), and deleted the last sentence in the language following paragraph (d), which read: "Where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this section if said signs or notices are posted at such points of access".

Compiler's Notes.

The letter "s" and the words enclosed in parentheses so appeared in the law as enacted.

18-7020. Destroying lumber, poles, rafts, and vessels. — Every person who willfully and maliciously burns, injures, marks, brands or defaces or destroys any pile, piling, telegraph pole, telephone pole or electric transmission line pole, fence post, pile or raft of wood, plank, boards or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or part thereof, or cuts, breaks, injures, sinks or sets adrift any vessel the property of another, is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment.

History.

I.C., § 18-7020, as added by 1972, ch. 336, § 1, p. 844; am. 2006, ch. 71, § 18, p. 216.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "$300."

18-7031. Placing debris on public or private property a misdemeanor. — It shall constitute a misdemeanor for any person, natural or artificial, to deposit upon any public or private property within this state any debris, paper, litter, glass bottles, glass, nails, tacks, hooks, cans, barbed wire, boards, trash, garbage, lighted material or other waste substances on any place not authorized by any county, city, village or the owner of such property, and is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding one thousand dollars ($1,000), or both. Additionally, a peace officer or state fish and game personnel supervised public service of not less than eight (8) hours and not more than forty (40) hours may be imposed to clean up and to properly dispose of debris from public property, or from private property with the written consent of the private property owner, as ordered by the court.

History.

I.C., § 18-7031, as added by 1972, ch. 336, § 1, p. 844; am. 1994, ch. 119, § 1, p. 269; am. 2006, ch. 71, § 19, p. 216.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 71, substituted "one thousand dollars ($1,000)" for "three hundred dollars ($300)."

18-7042. Interference with agricultural production. — (1) A person commits the crime of interference with agricultural production if the person knowingly:

(a) Is not employed by an agricultural production facility and enters an agricultural production facility by force, threat, misrepresentation or trespass;

(b) Obtains records of an agricultural production facility by force, threat, misrepresentation or trespass;

(c) Obtains employment with an agricultural production facility by force, threat, or misrepresentation with the intent to cause economic or other injury to the facility's operations, livestock, crops, owners, personnel, equipment, buildings, premises, business interests or customers;

(d) Enters an agricultural production facility that is not open to the public and, without the facility owner's express consent or pursuant to judicial process or statutory authorization, makes audio or video recordings of the conduct of an agricultural production facility's operations; or

(e) Intentionally causes physical damage or injury to the agricultural production facility's operations, livestock, crops, personnel, equipment, buildings or premises.

(2) For purposes of this section:

(a) "Agricultural production" means activities associated with the production of agricultural products for food, fiber, fuel and other lawful uses and includes without limitation:

(i) Construction, expansion, use, maintenance and repair of an agricultural production facility;

(ii) Preparing land for agricultural production;

(iii) Handling or applying pesticides, herbicides or other chemicals, compounds or substances labeled for insects, pests, crops, weeds, water or soil;

(iv) Planting, irrigating, growing, fertilizing, harvesting or producing agricultural, horticultural, floricultural and viticultural crops, fruits and vegetable products, field grains, seeds, hay, sod and nursery stock, and other plants, plant products, plant byproducts, plant waste and plant compost;

(v) Breeding, hatching, raising, producing, feeding and keeping livestock, dairy animals, swine, furbearing animals, poultry, eggs, fish and other aquatic species, and other animals, animal products and animal byproducts, animal waste, animal compost, and bees, bee products and bee byproducts;

(vi) Processing and packaging agricultural products, including the processing and packaging of agricultural products into food and other agricultural commodities;

(vii) Manufacturing animal feed.

(b) "Agricultural production facility" means any structure or land, whether privately or publicly owned, leased or operated, that is being used for agricultural production.

(3) A person found guilty of committing the crime of interference with agricultural production shall be guilty of a misdemeanor and shall be

punished by a term of imprisonment of not more than one (1) year or by a fine not in excess of five thousand dollars ($5,000), or by both such fine and imprisonment.

(4) In addition to any other penalty imposed for a violation of this section, the court shall require any person convicted, found guilty or who pleads guilty to a violation of this section to make restitution to the victim of the offense in accordance with the terms of section 19-5304, Idaho Code. Provided however, that such award shall be in an amount equal to twice the value of the damage resulting from the violation of this section.

History.
I.C., § 18-7042, as added by 2014, ch. 30, § 1, p. 44.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2014, ch. 30 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.
Section 3 of S.L. 2014, ch. 30 declared an emergency. Approved February 28, 2014.

CHAPTER 73
CIVIL RIGHTS

18-7301. Freedom from discrimination constitutes a civil right.

RESEARCH REFERENCES

A.L.R. — What constitutes racial harassment in employment violative of state civil rights acts. 17 A.L.R.6th 563.

18-7302. Definitions.

RESEARCH REFERENCES

A.L.R. — What constitutes racial harassment in employment violative of state civil rights acts. 17 A.L.R.6th 563.

CHAPTER 75
AIRCRAFT HIJACKING

18-7501. Aircraft hijacking defined — Penalty.

RESEARCH REFERENCES

A.L.R. — Validity of airport security measures. 125 A.L.R.5th 281.

18-7502. Assault with intent to commit aircraft hijacking defined — Penalty.

RESEARCH REFERENCES

A.L.R. — Validity of airport security measures. 125 A.L.R.5th 281.

18-7503. Weapons aboard aircraft — Penalty.

RESEARCH REFERENCES

A.L.R. — Validity of airport security measures. 125 A.L.R.5th 281.

18-7504. Threats made against airline passengers, other persons, commercial airline companies, or aircraft — Penalty.

RESEARCH REFERENCES

A.L.R. — Validity of airport security measures. 125 A.L.R.5th 281.

CHAPTER 78

RACKETEERING ACT

18-7801. Short title.

RESEARCH REFERENCES

A.L.R. — Validity of criminal state racketeer influenced and corrupt organizations acts and similar acts related to gang activity and the like. 58 A.L.R.6th 385.

18-7803. Definitions.

JUDICIAL DECISIONS

Enterprise.

Court properly granted summary judgment to stock sellers on a buyer's racketeering claim because the buyer never alleged, nor produced any evidence establishing, that the sellers associated or agreed to engage in any of the predicate acts, nor that they shared a common purpose to engage in a predicate act. Mannos v. Moss, 143 Idaho 927, 155 P.3d 1166 (2007).

Cited in: Hoyle v. Ada County, 501 F.3d 1053 (9th Cir. 2007).

18-7804. Prohibited activities — Penalties.

JUDICIAL DECISIONS

Analysis

Establishment of enterprise.
Qualified verdict.

Establishment of Enterprise.

Court properly granted summary judgment to stock sellers on a buyer's racketeering claim because the buyer never alleged, nor produced any evidence establishing, that the sellers associated or agreed to engage in any of the predicate acts, nor that they shared a common purpose to engage in a predicate act. Mannos v. Moss, 143 Idaho 927, 155 P.3d 1166 (2007).

Qualified Verdict.

Special verdict form, which featured the key notation, "except as to the seven predicate acts upon which we could not reach unanimous agreement," next to the checked "not guilty" box for the racketeering charges did not reflect an unambiguous verdict of acquittal but a qualified verdict that excluded the seven excepted predicate acts and reflected the jury's inability to reach a unanimous verdict on the racketeering charges; therefore, the trial court appropriately declared a mistrial and the Double Jeopardy Clause of the Fifth Amendment did not bar a second prosecution charging that the prisoner committed five of the seven predicate acts as discrete and independent offenses. Hoyle v. Ada County, 501 F.3d 1053 (9th Cir. 2007), cert. denied, 522 U.S. 1243, 170 L. Ed. 2d 297, 128 S. Ct. 1482 (2008).

RESEARCH REFERENCES

A.L.R. — Validity of criminal state racketeer influenced and corrupt organizations acts and similar acts related to gang activity and the like. 58 A.L.R.6th 385.

18-7805. Racketeering — Civil remedies.

RESEARCH REFERENCES

A.L.R. — Validity of criminal state racketeer influenced and corrupt organizations acts and similar acts related to gang activity and the like. 58 A.L.R.6th 385.

CHAPTER 79

MALICIOUS HARASSMENT

18-7902. Malicious harassment defined — Prohibited.

JUDICIAL DECISIONS

ANALYSIS

Relevant evidence.
Sufficient evidence.

Relevant Evidence.

In defendant's prosecution for malicious harassment and conspiracy to commit malicious harassment, it was not an abuse of discretion to admit defendant's co-conspirators' racially motivated tattoos, even though defendant had none, because the co-conspirators' racially-based intent was relevant to defendant's similar motive. State v. Tankovich, — Idaho —, 307 P.3d 1247 (Ct. App. 2013).

Sufficient Evidence.

Sufficient evidence supported defendant's convictions for malicious harassment and conspiracy to commit malicious harassment because the evidence showed defendant and defendant's co-conspirators (1) occupied a vehicle displaying racially motivated symbols, (2) aggressively approached the victim before the victim displayed a weapon, and (3) shouted racial slurs at the victim. State v. Tankovich, — Idaho —, 307 P.3d 1247 (Ct. App. 2013).

18-7905. Stalking in the first degree.

JUDICIAL DECISIONS

Analysis

Double jeopardy.
Lesser included offense.
Prior misconduct evidence.
Protection order.

Double Jeopardy.

To avoid double jeopardy, acts necessary to prove a violation of this section, as an element of felony stalking, must necessarily be different from the acts upon which defendant's prior conviction for misdemeanor stalking under § 18-7906 was based. State v. Stewart, 149 Idaho 383, 234 P.3d 707 (2010).

Lesser Included Offense.

Misdemeanor stalking is a lesser included offense of felony stalking. State v. Stewart, 149 Idaho 383, 234 P.3d 707 (2010).

Prior Misconduct Evidence.

Evidence of defendant's prior misconduct toward the victim was highly probative to show that defendant's subsequent stalking behavior would have alarmed the victim and caused her substantial emotional distress, and it was relevant to show that the stalking was done maliciously, the mens rea element of the stalking charge. State v. Hoak, 147 Idaho 919, 216 P.3d 1291 (Ct. App. 2009).

Protection Order.

Because the legislature cited specific sections of Idaho Code to define certain terms in this section, but did not do so for the term protection order in paragraph (1)(a), the absence of a citation suggests that the legislature did not intend to limit the term protection order to an order issued to a specific section of the Idaho Code. State v. Hartzell, — Idaho —, 305 P.3d 551 (Ct. App. 2013).

Violation of a protective order issued in the state of Washington may be the basis for elevating charges against a defendant in this state from second to first degree stalking. State v. Hartzell, — Idaho —, 305 P.3d 551 (Ct. App. 2013).

18-7906. Stalking in the second degree.

JUDICIAL DECISIONS

Analysis

Double jeopardy.
Lesser included offense.
Prior misconduct evidence.

Double Jeopardy.

To avoid double jeopardy, acts necessary to prove a violation of § 18-7905, as an element of felony stalking, must necessarily be different from the acts upon which defendant's prior conviction for misdemeanor stalking under this section was based. State v. Stewart, 149 Idaho 383, 234 P.3d 707 (2010).

Lesser included Offense.

Misdemeanor stalking is a lesser included offense of felony stalking. State v. Stewart, 149 Idaho 383, 234 P.3d 707 (2010).

Prior Misconduct Evidence.

Evidence of defendant's prior misconduct toward the victim was highly probative to show that defendant's subsequent stalking behavior would have alarmed the victim and caused her substantial emotional distress, and it was relevant to show that the stalking was done maliciously, the mens rea element of the stalking charge. State v. Hoak, 147 Idaho 919, 216 P.3d 1291 (Ct. App. 2009).

Cited in: State v. Hartzell, — Idaho —, 305 P.3d 551 (Ct. App. 2013).

CHAPTER 80
MOTOR VEHICLES

SECTION.
18-8001. Driving without privileges.
18-8002. Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Penalty and suspension upon refusal of tests.
18-8002A. Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Suspension upon failure of tests.
18-8003. Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances and restitution orders.
18-8004A. Penalties — Persons under 21 with less than 0.08 alcohol concentration.
18-8004C. Excessive alcohol concentration — Penalties.
18-8005. Penalties.
18-8006. Aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances.
18-8008. Ignition interlocks — Electronic monitoring devices.

18-8001. Driving without privileges. — (1) Any person who drives or is in actual physical control of any motor vehicle upon the highways of this state with knowledge or who has received legal notice pursuant to section 49-320, Idaho Code, that his driver's license, driving privileges or permit to drive is revoked, disqualified or suspended in this state or any other jurisdiction is guilty of a misdemeanor.

(2) A person has knowledge that his license, driving privileges or permit to drive is revoked, disqualified or suspended when:

(a) He has actual knowledge of the revocation, disqualification or suspension of his license, driving privileges or permit to drive; or

(b) He has received oral or written notice from a verified, authorized source, that his license, driving privileges or permit to drive was revoked, disqualified or suspended; or

(c) Notice of the suspension, disqualification or revocation of his license, driving privileges or permit to drive was mailed by first class mail to his address pursuant to section 49-320, Idaho Code, as shown in the transportation department records, and he failed to receive the notice or learn of its contents as a result of his own unreasonable, intentional or negligent conduct or his failure to keep the transportation department apprised of his mailing address as required by section 49-320, Idaho Code; or

(d) He has knowledge of, or a reasonable person in his situation exercising reasonable diligence would have knowledge of, the existence of facts or circumstances which, under Idaho law, might have caused the revocation, disqualification or suspension of his license, driving privileges or permit to drive.

(3) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for the first time:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than two (2) days, and may be sentenced to not more than six (6) months, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period

of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed one thousand dollars ($1,000); and

(c) May have his driving privileges suspended by the court for a period not to exceed one hundred eighty (180) days following the end of any period of suspension, disqualification or revocation existing at the time of the violation; the defendant may request restricted driving privileges during the period of the suspension or disqualification, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(4) Any person who pleads guilty to or is found guilty of a violation of subsection (1) for a second time within five (5) years, irrespective of the form of the judgment(s) or withheld judgment(s):

(a) Shall be sentenced to jail for a mandatory minimum period of not less than twenty (20) days, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed one thousand dollars ($1,000); and

(c) May have his driving privileges suspended by the court for a period not to exceed one (1) year following the end of any period of suspension, disqualification or revocation existing at the time of the second violation. The defendant may request restricted driving privileges during the period of the suspension, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(5) Any person who has pled guilty to or been found guilty of more than two (2) violations of the provisions of subsection (1) of this section within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor; and

(a) Shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, and may be sentenced to not more than one (1) year; provided, however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work release or work detail program within the custody of the county sheriff during the period of incarceration, or, if the underlying suspension that resulted in the violation of this section is not a suspension resulting from

an offense identified in subsection (8) of this section, the judge may authorize an equivalent amount of community service in lieu of jail, or any equivalent combination of these options;

(b) May be fined an amount not to exceed three thousand dollars ($3,000); and

(c) May have his driving privileges suspended by the court for a period not to exceed two (2) years following the end of any period of suspension, disqualification or revocation existing at the time of the violation. The defendant may request restricted driving privileges during the period of the suspension, which the court may allow if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment, education or for family health needs.

(6) A minor may be prosecuted for a violation of subsection (1) of this section under chapter 5, title 20, Idaho Code.

(7) If a person is convicted for a violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, and at the time of arrest had no driving privileges, the penalties imposed by this section shall be in addition to any penalties imposed under the provisions of section 18-8005, 18-8004A, 18-8004C or 18-8006, Idaho Code, and not in lieu thereof.

(8) For purposes of this section, the offenses referred to in subsections (3)(a), (4)(a) and (5)(a) of this section are:

(a) Section 18-1501(3), Idaho Code, transporting a minor in a motor vehicle while under the influence;

(b) Section 18-4006(3), Idaho Code, vehicular manslaughter;

(c) Section 18-8001, Idaho Code, driving without privileges;

(d) Section 18-8004, Idaho Code, driving under the influence of alcohol, drugs or other intoxicating substances;

(e) Section 18-8004C, Idaho Code, excessive alcohol concentration;

(f) Section 18-8006, Idaho Code, aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances;

(g) Section 18-8007, Idaho Code, leaving the scene of an accident resulting in injury or death;

(h) Section 49-1229, Idaho Code, required motor vehicle insurance;

(i) Section 49-1232, Idaho Code, certificate or proof of liability insurance to be carried in motor vehicle;

(j) Section 49-1401, Idaho Code, reckless driving;

(k) Section 49-1404, Idaho Code, eluding a police officer;

(*l*) Section 49-1428, Idaho Code, operating a vehicle without liability insurance;

or any substantially conforming foreign criminal violation.

(9) In no event shall a person be granted restricted driving privileges unless the person shows proof of liability insurance or other proof of financial responsibility, as provided in chapter 12, title 49, Idaho Code.

(10) In no event shall a person who is disqualified or whose driving privileges are suspended, revoked or canceled under the provisions of this chapter be granted restricted driving privileges to operate a commercial motor vehicle.

History.

I.C., § 18-8001, as added by 1984, ch. 22, § 2, p. 25; am. 1988, ch. 265, § 563, p. 549; am. 1989, ch. 88, § 59, p. 151; am. 1990, ch. 45, § 42, p. 71; am. 1990, ch. 432, § 9, p. 1198; am. 1992, ch. 115, § 38, p. 345; am. 1994, ch. 148, § 1, p. 336; am. 1998, ch. 110, § 1, p. 375; am. 1998, ch. 325, § 1, p. 1050; am. 2003, ch. 157, § 1, p. 442; am. 2005, ch. 359, § 13, p. 1133; am. 2007, ch. 34, § 1, p. 78; am. 2011, ch. 105, § 1, p. 269.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 34, added subsection (10).

The 2011 amendment, by ch. 105, at the beginning of paragraph (3)(c), substituted "May have his driving privileges suspended by the court for a period not to exceed one hundred eighty (180) days" for "Shall have his driving privileges suspended by the court for an additional six (6) months"; in paragraph (4)(c), substituted "May have his driving privileges suspended by the court for a period not to exceed one (1) year" for "Shall have his driving privileges suspended by the court for an additional one (1) year" and deleted "during the first thirty (30) days of which time he shall have absolutely no driving privileges of any kind" following "second violation" in the first sentence and, in the last sentence, deleted "or disqualification, to begin after the period of absolute suspension" following "period of the suspension"; and in paragraph (5)(c), substituted "May have his driving privileges suspended by the court for a period not to exceed two (2) years" for "Shall have his driving privileges suspended by the court for an additional two (2) years" and deleted "during the first ninety (90) days of which time he shall have absolutely no driving privileges of any kind" following "the violation" in the first sentence and, in the last sentence, deleted "or disqualification, to begin after the period of absolute suspension" following "period of the suspension."

JUDICIAL DECISIONS

Analysis

Arrest.
Corpus delicti.

Arrest.

Offense of driving without privileges was committed by defendant in the presence of two police officers, and the officers had the authority to arrest defendant, where the officers saw a vehicle being driven and defendant admitted that he had been driving the vehicle and that his driver's license was suspended. State v. Campbell, 145 Idaho 754, 185 P.3d 266 (Ct. App. 2008).

Corpus Delicti.

Driver's conviction for driving with a suspended license did not violate the corpus delicti rule because his confession to a police officer was sufficiently corroborated by evidence that (1) the driver, when asked for identification, gave the officer an Idaho identification card, which was ordinarily not issued to someone who held a valid driver's license; and (2) the driver had engaged in behavior that suggested that he was attempting to avoid contact with the officer because he knew that he was driving illegally. State v. Webb, 144 Idaho 413, 162 P.3d 792 (Ct. App. 2007).

Cited in: State v. Martin, 148 Idaho 31, 218 P.3d 10 (Ct. App. 2009).

18-8002. Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Penalty and suspension upon refusal of tests. — (1) Any person who drives or is in actual physical control of a motor vehicle in this state shall be deemed to have given his consent to evidentiary testing for concentration of alcohol as defined in section 18-8004, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been driving or in actual

physical control of a motor vehicle in violation of the provisions of section 18-8004, Idaho Code, or section 18-8006, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete, evidentiary testing:

(a) He is subject to a civil penalty of two hundred fifty dollars ($250) for refusing to take the test;

(b) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;

(c) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty and his driver's license will be suspended absolutely for one (1) year if this is his first refusal and two (2) years if this is his second refusal within ten (10) years;

(d) Provided however, if he is admitted to a problem solving court program and has served at least forty-five (45) days of an absolute suspension of driving privileges, then he may be eligible for a restricted permit for the purpose of getting to and from work, school or an alcohol treatment program; and

(e) After submitting to evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) If the motorist refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) above:

(a) He shall be fined a civil penalty of two hundred fifty dollars ($250);

(b) A written request may be made within seven (7) calendar days for a hearing before the court; if requested, the hearing must be held within thirty (30) days of the date of service unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing, and the burden of proof shall be upon the defendant; the court shall sustain a two hundred fifty dollar ($250) civil penalty immediately and suspend all the defendant's driving privileges immediately for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights;

(c) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall sustain a two hundred fifty dollar ($250) civil penalty and suspend the defendant's driving privileges for one (1) year for a first refusal and two (2) years for a second refusal within ten (10) years, during which time he shall have absolutely no driving privileges of any kind;

(d) Notwithstanding the provisions of subsection (4)(b) and (c) of this section, if the defendant is enrolled in and is a participant in good

standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives, then the defendant shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the defendant has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year, on each of the motor vehicles owned or operated, or both, by the defendant and that the defendant has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the defendant successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program; and

(e) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) Any sustained civil penalty or suspension of driving privileges under this section or section 18-8002A, Idaho Code, shall be a civil penalty separate and apart from any other suspension imposed for a violation of other Idaho motor vehicle codes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(6) No hospital, hospital officer, agent, or employee, or health care professional licensed by the state of Idaho, whether or not such person has privileges to practice in the hospital in which a body fluid sample is obtained or an evidentiary test is made, shall incur any civil or criminal liability for any act arising out of administering an evidentiary test for alcohol concentration or for the presence of drugs or other intoxicating substances at the request or order of a peace officer in the manner described in this section and section 18-8002A, Idaho Code; provided that nothing in this section shall relieve any such person or legal entity from civil liability arising from the failure to exercise the community standard of care.

(a) This immunity extends to any person who assists any individual to withdraw a blood sample for evidentiary testing at the request or order of a peace officer, which individual is authorized to withdraw a blood sample under the provisions of section 18-8003, Idaho Code, regardless of the location where the blood sample is actually withdrawn.

(b) A peace officer is empowered to order an individual authorized in section 18-8003, Idaho Code, to withdraw a blood sample for evidentiary testing when the peace officer has probable cause to believe that the suspect has committed any of the following offenses:

(i) Aggravated driving under the influence of alcohol, drugs or other intoxicating substances as provided in section 18-8006, Idaho Code;

(ii) Vehicular manslaughter as provided in subsection (3)(a), (b) and (c) of section 18-4006, Idaho Code;

(iii) Aggravated operating of a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances as provided in section 67-7035, Idaho Code; or

(iv) Any criminal homicide involving a vessel on the waters of the state while under the influence of alcohol, drugs or other intoxicating substances.

(c) Nothing herein shall limit the discretion of the hospital administration to designate the qualified hospital employee responsible to withdraw the blood sample.

(d) The law enforcement agency that requests or orders withdrawal of the blood sample shall pay the reasonable costs to withdraw such blood sample, perform laboratory analysis, preserve evidentiary test results, and testify in judicial proceedings. The court may order restitution pursuant to the provisions of section 18-8003(2), Idaho Code.

(e) The withdrawal of the blood sample may be delayed or terminated if:

(i) In the reasonable judgment of the hospital personnel withdrawal of the blood sample may result in serious bodily injury to hospital personnel or other patients; or

(ii) The licensed health care professional treating the suspect believes the withdrawal of the blood sample is contraindicated because of the medical condition of the suspect or other patients.

(7) "Actual physical control" as used in this section and section 18-8002A, Idaho Code, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(8) Any written notice required by this section shall be effective upon mailing.

(9) For the purposes of this section and section 18-8002A, Idaho Code, "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (10) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(10) A person who submits to a breath test for alcohol concentration, as defined in subsection (4) of section 18-8004, Idaho Code, may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was driving under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his or her report the facts upon which that belief is based.

(11) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred. If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the imposition, unless this period has been extended by the court for good cause shown, the prosecuting attorney representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the civil penalty, attorney's fees, costs and interest may be assessed against any person who fails to pay the civil penalty.

History.

I.C., § 18-8002, as added by 1984, ch. 22, § 2, p. 25; am. 1987, ch. 122, § 1, p. 247; am. 1987, ch. 132, § 1, p. 262; am. 1987, ch. 220, § 2, p. 469; am. 1989, ch. 88, § 60, p. 151; am. 1989, ch. 366, § 1, p. 915; am. 1989, ch. 367, § 1, p. 920; am. 1990, ch. 45, § 43, p. 71; am. 1992, ch. 115, § 39, p. 345; am. 1992, ch. 133, § 1, p. 416; am. 1993, ch. 413, § 1, p. 1515; am. 2006, ch. 224, § 1, p. 665; am. 2006, ch. 261, § 1, p. 800; am. 2009, ch. 108, § 1, p. 344; am. 2009, ch. 184, § 1, p. 584; am. 2011, ch. 15, § 1, p. 43; am. 2011, ch. 265, § 1, p. 710; am. 2014, ch. 63, § 2, p. 151.

STATUTORY NOTES

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 224, inserted "Penalty and" in the section heading; added subsection (3)(a), and made related redesignations; in subsection (3)(d), inserted "the court shall sustain the civil penalty and"; in subsection (4)(a), added "He shall be fined a civil penalty of two hundred fifty dollars ($250) and"; in subsections (4)(b) and (c), inserted "sustain a two hundred fifty dollar ($250) civil penalty and"; in subsection (4)(b), inserted "immediately"; in subsection (5), inserted "sustained civil penalty or"; and added subsection (11).

The 2006 amendment, by ch. 261, rewrote subsection (3)(c), which formerly read: "If he does not request a hearing or does not prevail at the hearing, his driver's license will be suspended absolutely for one hundred eighty (180) days if this is his first refusal and one (1) year if this is his second refusal within five (5) years; and"; rewrote the third sentence of subsection (4)(b), which formerly read: "The hearing shall be limited to the question of why the defendant did not submit to, or complete, evidentiary testing, and the burden of proof shall be upon the defendant; the court shall suspend all his driving privileges immediately for one hundred eighty (180) days for a first refusal and one (1) year for a second refusal within five (5) years unless it finds that the peace officer did not have legal cause to stop and request him to take the test or that the request violated his civil rights"; and rewrote subsection (4)(c), which formerly read: "If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall suspend his driving privileges for one hundred eighty (180) days for a first refusal and one (1) year for a second refusal within five (5) years, during which time he shall have absolutely no driving privileges of any kind; and."

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 108, added the last sentence in subsection (6)(d).

The 2009 amendment, by ch. 184, added subsections (3)(e) and (4)(d) and made related redesignations.

The 2011 amendment, by ch. 15, deleted former paragraph (3)(b), which read: "His driver's license will be seized by the peace officer and a temporary permit will be issued; provided however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations, and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test" and redesignated former paragraphs (3)(c) to (f) as present paragraphs

(3)(b) to (e); deleted "and his driver's license or permit shall be seized by the peace officer and forwarded to the court and a temporary permit shall be issued by the peace officer which allows him to operate a motor vehicle until the date of his hearing, if a hearing is requested, but in no event for more than thirty (30) days; provided however, that no peace officer shall issue a temporary permit pursuant to this section to a driver whose driver's license or permit has already been and is suspended or revoked because of previous violations and in no instance shall a temporary permit be issued to a driver of a commercial vehicle who refuses to submit to or fails to complete an evidentiary test" from the end of paragraph (4)(a); and in paragraph (4)(b), substituted "date of service" for "seizure" in the first sentence, and deleted the former second sentence which read: "The court, in granting such an extension, may, for good cause shown, extend the defendant's temporary driving privileges for one (1) additional thirty (30) day period."

The 2011 amendment, by ch. 265, rewrote paragraph (3)(e) (now (d)), which formerly read: "Provided however, if he is enrolled in and is a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, then he shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that he has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by him and that he has shown proof of financial responsibility"; and, in paragraph (4)(d), inserted "or mental health court," "or other similar problem solving court utilizing community-based sentencing alternatives," and "or mental health court or other similar problem solving court" (three times).

The 2014 amendment, by ch. 63, substituted "a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year" for "an ignition interlock device is installed" near the middle of paragraph (4)(d).

Effective Dates.

Section 3 of S.L. 2011, ch. 15 declared an emergency effective on and after May 1, 2011. Approved February 23, 2011.

Section 5 of S.L. 2011, ch 265 provided that the act should take effect on and after January 1, 2012.

JUDICIAL DECISIONS

Analysis

Advisory form.
Blood draw.
Constitutionality.
Due process.
Implied consent.
Probable cause.
Refusal to take test.
—Improperly informed of consequences.
Reliability of testing equipment.
Request for test by defendant.
Test.
—Standards.

Advisory Form.

Information on the consequences of refusing an alcohol concentration test, read to a stopped driver from an advisory form issued by the Idaho transportation department, did not comport with the provisions of this section and, in fact, directly contradicted the section by affirmatively informing the driver that her nonresident driver's license would not be seized by the officer. The magistrate was, therefore, correct in declining to suspend the driver's license. State v. Kling (In re Kling), 150 Idaho 188, 245 P.3d 499 (Ct. App. 2010).

Blood Draw.

An officer may always request hospital personnel to draw a suspect's blood upon suspicion for DUI but may only compel a blood draw under certain circumstances. State v. Diaz, 144 Idaho 300, 160 P.3d 739 (2007).

Constitutionality.

Driver was presumed to know the laws governing his commercial driver's license and, thus, could not complain that this section was unconstitutionally vague as applied to him; this section and § 49-335 are not ambiguous and not void for vagueness. Williams v. State (In re Driver's License Suspension of Williams), 153 Idaho 380, 283 P.3d 127 (Ct. App. 2012).

Due Process.

Subsection (3) does not create a due process right: a statutory directive to law enforcement authorities does not amount to a due process right of an accused, merely on the basis that it was mandated by statute. State v. Decker, 152 Idaho 142, 267 P.3d 729 (Ct. App. 2011).

Implied Consent.

Blood draw of unconscious DUI suspect was permissible under the exigent circumstances exception to a warrant and also pursuant to defendant's implied consent. State v. Dewitt, 145 Idaho 709, 184 P.3d 215 (Ct. App. 2008).

Under this section, any person who drives or is in actual physical control of a vehicle is deemed to have impliedly consented to evidentiary testing for alcohol at the request of a peace officer who has reasonable grounds to believe the person is driving under the influence. State v. LeClercq, 149 Idaho 905, 243 P.3d 1093 (Ct. App. 2010).

Probable Cause.

Police officer had probable cause to arrest defendant for driving under the influence where the record established that defendant was weaving, that the officer smelled alcohol inside his vehicle and on his person, that he admitted to drinking two beers after initially denying any consumption of alcohol, and that his eyes were bloodshot. Dep't of Transp. v. Gibbar (In re Gibbar), 143 Idaho 937, 155 P.3d 1176 (Ct. App. 2006).

Refusal to Take Test.

—Improperly Informed of Consequences.

While a notice of suspension form and a recording properly informed the driver of his rights and the consequences of refusal to submit to a breath alcohol concentration test, the officer's statements regarding, inter alia, an automatic suspension were incorrect as the driver was entitled to a hearing within seven days of his refusal. The contradictory information provided by the officer rendered the advisory required by this section incomplete. Thomas v. State (In re Cunningham), 150 Idaho 687, 249 P.3d 880 (Ct. App. 2011).

Reliability of Testing Equipment.

Although a motorist argued that the results of his blood alcohol concentration (BAC) test were unreliable and inadmissible because the calibration solution for the Intoxilyzer 5000 was not changed within approximately 100 calibration checks in accordance with the state police's standard operating procedure, the motorist failed to meet his burden of proving by a preponderance of the evidence that his test was not conducted in accordance with applicable regulations or that the unit was not functioning properly. Wheeler v. Idaho Transp. Dep't, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009).

Request for Test by Defendant.

Although police had no duty to make a telephone available to defendant to arrange for independent blood-alcohol testing when defendant did not request it, defendant's assertion of his right to obtain such a test after his release triggered a police duty not to unreasonably delay defendant's booking process and release after his arrest for driving under the influence so as to prevent a violation of defendant's due process rights. State v. Hedges, 143 Idaho 884, 154 P.3d 1074 (Ct. App. 2007).

Test.

—Standards.

Although a driver impiedly consents to a blood-alcohol test, when there is reasonable suspicion, by operating a motor vehicle on state highways, the fourth amendment and this section require police to perform the test in a medically acceptable manner and with the use of only reasonable force. Miller v. Idaho State Patrol, 150 Idaho 856, 252 P.3d 1274 (2011).

Cited in: McDaniel v. State (In re Driver's License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); State v. Jacobson, 150 Idaho 131, 244 P.3d 630 (Ct. App. 2010); Idaho State Bar v. Clark (In re Clark), 153 Idaho 349, 283 P.3d 96 (2012).

18-8002A. Tests of driver for alcohol concentration, presence of drugs or other intoxicating substances — Suspension upon failure of tests. — (1) Definitions. As used in this section:

(a) "Actual physical control" means being in the driver's position of a motor vehicle with the motor running or with the vehicle moving.

(b) "Administrative hearing" means a hearing conducted by a hearing officer to determine whether a suspension imposed by the provisions of this section should be vacated or sustained.

(c) "Department" means the Idaho transportation department and, as the

context requires, shall be construed to include any agent of the department designated by rule as hereinafter provided.

(d) "Director" means the director of the Idaho transportation department.

(e) "Evidentiary testing" means a procedure or test or series of procedures or tests utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person, including additional testing authorized by subsection (6) of this section. An evidentiary test for alcohol concentration shall be based on a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath, or sixty-seven (67) milliliters of urine. Analysis of blood, breath or urine for the purpose of determining alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by the Idaho state police, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated and approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(f) "Hearing officer" means a person designated by the department to conduct administrative hearings. The hearing officer shall have authority to administer oaths, examine witnesses and take testimony, receive relevant evidence, issue subpoenas, regulate the course and conduct of the hearing and make a final ruling on the issues before him.

(g) "Hearing request" means a request for an administrative hearing on the suspension imposed by the provisions of this section.

(2) Information to be given. At the time of evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if the person refuses to submit to or fails to complete evidentiary testing, or if the person submits to and completes evidentiary testing and the test results indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the person shall be informed substantially as follows (but need not be informed verbatim):

If you refuse to submit to or if you fail to complete and pass evidentiary testing for alcohol or other intoxicating substances:

(a) The peace officer will issue a notice of suspension;

(b) You have the right to request a hearing within seven (7) days of the notice of suspension of your driver's license to show cause why you refused to submit to or to complete and pass evidentiary testing and why your driver's license should not be suspended;

(c) If you refused or failed to complete evidentiary testing and do not request a hearing before the court or do not prevail at the hearing, your driver's license will be suspended. The suspension will be for one (1) year

if this is your first refusal. The suspension will be for two (2) years if this is your second refusal within ten (10) years. You will not be able to obtain a temporary restricted license during that period;

(d) If you complete evidentiary testing and fail the testing and do not request a hearing before the department or do not prevail at the hearing, your driver's license will be suspended. This suspension will be for ninety (90) days if this is your first failure of evidentiary testing, but you may request restricted noncommercial vehicle driving privileges after the first thirty (30) days. The suspension will be for one (1) year if this is your second failure of evidentiary testing within five (5) years. You will not be able to obtain a temporary restricted license during that period;

(e) However, if you are admitted to a problem solving court program and have served at least forty-five (45) days of an absolute suspension of driving privileges, you may be eligible for a restricted permit for the purpose of getting to and from work, school or an alcohol treatment program; and

(f) After submitting to evidentiary testing you may, when practicable, at your own expense, have additional tests made by a person of your own choosing.

(3) Rulemaking authority of the Idaho state police. The Idaho state police may, pursuant to chapter 52, title 67, Idaho Code, prescribe by rule:

(a) What testing is required to complete evidentiary testing under this section; and

(b) What calibration or checking of testing equipment must be performed to comply with the department's requirements. Any rules of the Idaho state police shall be in accordance with the following: a test for alcohol concentration in breath as defined in section 18-8004, Idaho Code, and subsection (1)(e) of this section will be valid for the purposes of this section if the breath alcohol testing instrument was approved for testing by the Idaho state police in accordance with section 18-8004, Idaho Code, at any time within ninety (90) days before the evidentiary testing. A test for alcohol concentration in blood or urine as defined in section 18-8004, Idaho Code, that is reported by the Idaho state police or by any laboratory approved by the Idaho state police to perform this test will be valid for the purposes of this section.

(4) Suspension.

(a) Upon receipt of the sworn statement of a peace officer that there existed legal cause to believe a person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances and that the person submitted to a test and the test results indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code, the department shall suspend the person's driver's license, driver's permit, driving privileges or nonresident driving privileges:

(i) For a period of ninety (90) days for a first failure of evidentiary testing under the provisions of this section. The first thirty (30) days of the suspension shall be absolute and the person shall have absolutely

no driving privileges of any kind. Restricted noncommercial vehicle driving privileges applicable during the remaining sixty (60) days of the suspension may be requested as provided in subsection (9) of this section.

(ii) For a period of one (1) year for a second and any subsequent failure of evidentiary testing under the provisions of this section within the immediately preceding five (5) years. No driving privileges of any kind shall be granted during the suspension imposed pursuant to this subsection.

The person may request an administrative hearing on the suspension as provided in subsection (7) of this section. Any right to contest the suspension shall be waived if a hearing is not requested as therein provided.

(b) The suspension shall become effective thirty (30) days after service upon the person of the notice of suspension. The notice shall be in a form provided by the department and shall state:

(i) The reason and statutory grounds for the suspension;

(ii) The effective date of the suspension;

(iii) The suspension periods to which the person may be subject as provided in subsection (4)(a) of this section;

(iv) The procedures for obtaining restricted noncommercial vehicle driving privileges;

(v) The rights of the person to request an administrative hearing on the suspension and that if an administrative hearing is not requested within seven (7) days of service of the notice of suspension the right to contest the suspension shall be waived;

(vi) The procedures for obtaining an administrative hearing on the suspension;

(vii) The right to judicial review of the hearing officer's decision on the suspension and the procedures for seeking such review.

(c) Notwithstanding the provisions of subsection (4)(a)(i) and (ii) of this section, a person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year, on each of the motor vehicles owned or operated, or both, by the offender and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental

health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

(5) Service of suspension by peace officer or the department. If the driver submits to evidentiary testing after the information in subsection (2) of this section has been provided and the results of the test indicate an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code:

(a) The peace officer shall, acting on behalf of the department, serve the person with a notice of suspension in the form and containing the information required under subsection (4) of this section. The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4)(b) of this section.

(b) Within five (5) business days following service of a notice of suspension the peace officer shall forward to the department a copy of the completed notice of suspension form upon which the date of service upon the driver shall be clearly indicated, a certified copy or duplicate original of the results of all tests for alcohol concentration, as shown by analysis of breath administered at the direction of the peace officer, and a sworn statement of the officer, which may incorporate any arrest or incident reports relevant to the arrest and evidentiary testing setting forth:

(i) The identity of the person;

(ii) Stating the officer's legal cause to stop the person;

(iii) Stating the officer's legal cause to believe that the person had been driving or was in actual physical control of a motor vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code;

(iv) That the person was advised of the consequences of taking and failing the evidentiary test as provided in subsection (2) of this section;

(v) That the person was lawfully arrested;

(vi) That the person was tested for alcohol concentration, drugs or other intoxicating substances as provided in this chapter, and that the results of the test indicated an alcohol concentration or the presence of drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code.

If an evidentiary test of blood or urine was administered rather than a breath test, the peace officer or the department shall serve the notice of suspension once the results are received. The sworn statement required in this subsection shall be made on forms in accordance with rules adopted by the department.

(c) The department may serve the person with a notice of suspension if the peace officer failed to issue the notice of suspension or failed to include the date of service as provided in subsection (4)(b) of this section.

(6) Additional tests. After submitting to evidentiary testing at the request of the peace officer, the person may, when practicable, at his own expense,

have additional tests for alcohol concentration or for the presence of drugs or other intoxicating substances made by a person of his own choosing. The person's failure or inability to obtain additional tests shall not preclude admission of the results of evidentiary tests administered at the direction of the peace officer unless additional testing was denied by the peace officer.

(7) Administrative hearing on suspension. A person who has been served with a notice of suspension after submitting to an evidentiary test may request an administrative hearing on the suspension before a hearing officer designated by the department. The request for hearing shall be in writing and must be received by the department within seven (7) calendar days of the date of service upon the person of the notice of suspension, and shall include what issue or issues shall be raised at the hearing. The date on which the hearing request was received shall be noted on the face of the request.

If a hearing is requested, the hearing shall be held within twenty (20) days of the date the hearing request was received by the department unless this period is, for good cause shown, extended by the hearing officer for one ten (10) day period. Such extension shall not operate as a stay of the suspension, notwithstanding an extension of the hearing date beyond such thirty (30) day period. Written notice of the date and time of the hearing shall be sent to the party requesting the hearing at least seven (7) days prior to the scheduled hearing date. The department may conduct all hearings by telephone if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

The hearing shall be recorded. The sworn statement of the arresting officer, and the copy of the notice of suspension issued by the officer shall be admissible at the hearing without further evidentiary foundation. The results of any tests for alcohol concentration or the presence of drugs or other intoxicating substances by analysis of blood, urine or breath administered at the direction of the peace officer and the records relating to calibration, certification, approval or quality control pertaining to equipment utilized to perform the tests shall be admissible as provided in section 18-8004(4), Idaho Code. The arresting officer shall not be required to participate unless directed to do so by a subpoena issued by the hearing officer.

The burden of proof shall be on the person requesting the hearing. The hearing officer shall not vacate the suspension unless he finds, by a preponderance of the evidence, that:

(a) The peace officer did not have legal cause to stop the person; or

(b) The officer did not have legal cause to believe the person had been driving or was in actual physical control of a vehicle while under the influence of alcohol, drugs or other intoxicating substances in violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code; or

(c) The test results did not show an alcohol concentration or the presence of drugs or other intoxicating substances in violation of section 18-8004, 18-8004C or 18-8006, Idaho Code; or

(d) The tests for alcohol concentration, drugs or other intoxicating substances administered at the direction of the peace officer were not

conducted in accordance with the requirements of section 18-8004(4), Idaho Code, or the testing equipment was not functioning properly when the test was administered; or

(e) The person was not informed of the consequences of submitting to evidentiary testing as required in subsection (2) of this section.

If the hearing officer finds that the person has not met his burden of proof, he shall sustain the suspension. The hearing officer shall make findings of fact and conclusions of law on each issue and shall enter an order vacating or sustaining the suspension. The findings of fact, conclusions of law and order entered by the hearing officer shall be considered a final order pursuant to the provisions of chapter 52, title 67, Idaho Code, except that motions for reconsideration of such order shall be allowed and new evidence can be submitted.

The facts as found by the hearing officer shall be independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect the suspension required to be imposed under the provisions of this section. If a license is suspended under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, both the suspension under this section and the suspension imposed pursuant to the provisions of section 18-8005 or 18-8006, Idaho Code, shall be imposed, but the periods of suspension shall run concurrently, with the total period of suspension not to exceed the longer of the applicable suspension periods, unless the court ordering the suspension in the criminal case orders to the contrary.

(8) Judicial review. A party aggrieved by the decision of the hearing officer may seek judicial review of the decision in the manner provided for judicial review of final agency action provided in chapter 52, title 67, Idaho Code.

(9) Restricted noncommercial vehicle driving privileges. A person served with a notice of suspension for ninety (90) days pursuant to this section may apply to the department for restricted noncommercial vehicle driving privileges, to become effective after the thirty (30) day absolute suspension has been completed. The request may be made at any time after service of the notice of suspension. Restricted noncommercial vehicle driving privileges will be issued for the person to travel to and from work and for work purposes not involving operation of a commercial vehicle, to attend an alternative high school, work on a GED, for postsecondary education, or to meet the medical needs of the person or his family if the person is eligible for restricted noncommercial vehicle driving privileges. Any person whose driving privileges are suspended under the provisions of this chapter may be granted privileges to drive a noncommercial vehicle but shall not be granted privileges to operate a commercial motor vehicle.

(10) Rules. The department may adopt rules under the provisions of chapter 52, title 67, Idaho Code, deemed necessary to implement the provisions of this section.

History.

I.C., § 18-8002A, as added by 1993, ch. 413, § 2, p. 1515; am. 1994, ch. 357, § 1, p. 1117; am. 1997, ch. 238, § 1, p. 689; am. 1999, ch. 80, § 1, p. 227; am. 2000, ch. 469, § 27, p. 1450; am. 2004, ch. 126, § 1, p. 422; am. 2005, ch. 352, § 1, p. 1085; am. 2006, ch. 261, § 2, p. 800; am. 2009, ch. 184, § 2, p. 584; am. 2011, ch. 15, § 2, p. 43; am. 2011, ch. 265, § 2, p. 710; am. 2014, ch. 63, § 3, p. 151.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 261, in subsection (2)(c), substituted "year" for "hundred eighty (180) days" following "one" in the second sentence, and rewrote the third sentence, which formerly read: "The suspension will be for one (1) year if this is your second refusal within five (5) years."

The 2009 amendment, by ch. 184, added present subsections (2)(e) and (4)(c) and redesignated former subsection (2)(e) as subsection (2)(f).

The 2011 amendment, by ch. 15, in paragraph (2)(a), deleted "seize your driver's license and" following "The peace officer will" and deleted "and a temporary driving permit to you, but no peace officer will issue you a temporary driving permit if your driver's license or permit has already been and is suspended or revoked. No peace officer shall issue a temporary driving permit to a driver of a commercial vehicle who refuses to submit to or fails to complete and pass an evidentiary test" from the end; in the first sentence of paragraph (5)(a), deleted "take possession of the person's driver's license, shall issue a temporary permit which shall be valid for a period not to exceed thirty (30) days from the date of issuance, and" following "The peace officer shall" and deleted "will" preceding "serve the person"; deleted "a copy of any completed temporary permit form along with only confiscated driver's license" following "clearly indicated" in the introductory paragraph of paragraph (5)(b); deleted "and any temporary permit shall expire thirty (30) days after service of the notice of suspension" following "stay of the suspension" in the second sentence of the second paragraph of subsection (7); deleted "and any temporary permit" following "notice of suspension" in the second sentence of the third paragraph in subsection (7); and deleted the former third sentence of the paragraph immediately following paragraph (7)(e), which read: "If the suspension is vacated, the person's driver's license, unless unavailable by reason of an existing suspension, revocation, cancellation, disqualification or denial shall be returned to him."

The 2011 amendment, by ch. 265, rewrote paragraph (3)(e), which formerly read: "If you become enrolled in and are a participant in good standing in a drug court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, you shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court, provided that you have served a period of absolute suspension of driving privileges of at least forty-five (45) days, that an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by you and that you have shown proof of financial responsibility"; and, in paragraph (4)(c), inserted "'or mental health court," "or other similar problem solving court utilizing community-based sentencing alternatives," and "or mental health court or other similar problem solving court" (three times).

The 2014 amendment, by ch. 63, substituted "a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year" for "an ignition interlock device is installed" near the middle of paragraph (4)(c).

Effective Dates.

Section 3 of S.L. 2011, ch. 15 declared an emergency effective on and after May 1, 2011. Approved February 23, 2011.

Section 5 of S.L. 2011, ch 265 provided that the act should take effect on and after January 1, 2012.

JUDICIAL DECISIONS

Analysis

Administration of test.
Breathalyzer.
Burden of proof.
Constitutionality.
—Due process.
Construction.
Due process.

Fourth amendment stop.
Independent test.
Intoxicating substance.
Judicial review.
Length of suspension.
License suspension.
Test equipment.

Administration of Test.

Appellate court would not vacate decision suspending a driver's license for failing a breath test where a police report indicated that the officer properly observed the driver for 15 minutes before administering the breath test, as required by the manual for the Intoxilyzer 5000. Mahurin v. Idaho DOT (In re Mahurin), 140 Idaho 656, 99 P.3d 125 (Ct. App. 2004).

Failure to abide by the regulations set forth in the standard operating procedures and training manuals renders a breathalyzer test inadmissible as evidence, absent expert testimony that the improperly administered test nevertheless produced reliable results. Schroeder v. State (In re Schroeder), 147 Idaho 476, 210 P.3d 584 (Ct. App. 2009).

Where standard operating procedures and training manuals for the use of all breath test instruments conflict with the instructions for a specific breathalyzer as to when a breath test operator had to restart the monitoring period, the procedures for the specific monitoring machine must take precedence, and a license suspended following the less specific procedures must be reinstated. Schroeder v. State (In re Schroeder), 147 Idaho 476, 210 P.3d 584 (Ct. App. 2009).

Where arresting officer administered breath test with the Intoxilyzer 5000EN and testified that he had been trained on the Intoxilyzer 5000, but not the Intoxilyzer 5000EN, the hearing officer took improper notice of the manufacturer's materials, under § 67-5251(4), in ruling that the new instrument was an only an upgrade of the former model, requiring no additional training. As there was insufficient, competent and substantial evidence in the remainder of the record to support the hearing officer's finding that the arresting officer was properly certified to operate the Intoxilyzer 5000EN, the administrative license suspension must be reversed. Masterson v. Idaho DOT (In re Masterson), 150 Idaho 126, 244 P.3d 625 (Ct. App. 2010).

The purpose of a monitoring period prior to the administration of breath tests is to rule out the possibility that alcohol or other substances have been introduced into the subject's mouth from the outside or by belching or regurgitation. To satisfy the observation requirement, the level of surveillance must be such as could reasonably be expected to accomplish that purpose. The 15-minute monitoring period is not an onerous burden. This foundational standard ordinarily will be met if the officer stays in close physical proximity to the test subject so that the officer's senses of sight, smell and hearing can be employed. Therefore, so long as the officer is continually in a position to use his senses, not just sight, to determine that the defendant did not belch, burp or vomit during the monitoring period, the observation complies with training manual instructions. Wilkinson v. State, 151 Idaho 784, 264 P.3d 680 (Ct. App. 2011).

Breathalyzer.

Where the police officer left the room twice during the fifteen-minute monitoring period prior to administering a breathalyzer test, proper monitoring procedures were not followed and the test cannot be used as a basis for suspending a driver's license. Bennett v. State, 147 Idaho 141, 206 P.3d 505 (Ct. App. 2009).

A breath testing instrument is approved for evidentiary use if it yielded an acceptable performance verification within twenty-four hours after an evidentiary breath test, even if it had failed the most recent performance verification preceding the evidentiary test. Hubbard v. State, DOT (In re Hubbard), 152 Idaho 879, 276 P.3d 751 (Ct. App. 2012).

Burden of Proof.

The burden of proof at an administrative license suspension hearing under subsection (8) is on the individual requesting the hearing. Kimbley v. State (In re Kimbley), 154 Idaho 799, 302 P.3d 1072 (Ct. App. 2013).

Constitutionality.

—Due Process.

While an individual does have a substantial interest in his or her license, that interest may be subordinated by the state's interest in preventing intoxicated persons from driving. Bell v. Idaho Transp. Dep't (In re Bell), 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011).

Because the defendant never asserted that postponements of the hearing date or a delay in issuance of the hearing officer's decision constituted a deprivation of due process, the hearing officer had no occasion to present any justification for the delay or any explanation of how it may have served a governmental interest, and the appellate court will not address the constitutionality issue. Bell v.

Idaho Transp. Dep't (In re Bell), 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011).

Construction.

Suspension of driver's driving privileges was properly set aside because: (1) a test detected only Carboxy-THC in the driver's urine; (2) Carboxy-THC was neither intoxicating nor a drug, but only a metabolite of a drug; and (3) a suspension could be based only on test results showing the presence of an intoxicating drug. Reisenauer v. State (In re Reisenauer), 145 Idaho 948, 188 P.3d 890 (2008).

Due Process.

Driver's due process rights were not violated where he was given notice of the license suspension and of the procedures afforded to him to challenge it. The notice of consequences contained in this section was not deficient simply because it did not inform the driver of consequences under § 49-335(2). Peck v. State, 153 Idaho 37, 278 P.3d 439 (Ct. App. 2012).

Fourth Amendment Stop.

Defendant was properly convicted of felony driving under the influence where an officer noticed that defendant's eyes were glossy and that he smelled of alcohol, and defendant was not entitled to suppress the evidence obtained during the traffic stop. State v. Patterson, 140 Idaho 612, 97 P.3d 479 (Ct. App. 2004).

Administrative suspension of license was upheld, where arresting officer had probable cause to stop defendant based on his observation of defendant's suspicious demeanor in a store parking lot, his knowledge that defendant was on probation and prohibited from drinking alcohol, and defendant's erratic driving once he left parking lot. Dep't of Transp. v. Gibbar (In re Gibbar), 143 Idaho 937, 155 P.3d 1176 (Ct. App. 2006).

Independent Test.

An officer's failure to provide the warning under this section that defendant had the right to obtain an additional, independent blood alcohol concentration test did not require suppression of the test results in a criminal prosecution. State v. Decker, 152 Idaho 142, 267 P.3d 729 (Ct. App. 2011).

Intoxicating Substance.

Where defendant's driving privileges were suspended after being arrested for DUI and providing a urine sample showing the presence of cyclobenzaprine, the district court erred by reinstating his driving privileges based on a finding that the Idaho transportation department had not properly shown that cyclobenzaprine was intoxicating. This was inconsistent with the plain language of paragraph (7)(c), which requires the licensee to affirmatively prove that the drug is not intoxicating. Defendant presented no evidence that cyclobenzaprine was not an intoxicating drug. Idaho Transp. Dep't v. Van Camp (In re Van Camp), 153 Idaho 585, 288 P.3d 802 (2012).

Judicial Review.

The Idaho administrative procedures act, § 67-5201 et seq., governs the review of transportation department decisions to deny, cancel, suspend, disqualify, revoke, or restrict a person's driver's license. Bennett v. State, 147 Idaho 141, 206 P.3d 505 (Ct. App. 2009).

District court and appellate court lacked subject matter jurisdiction to consider the driver's petition for judicial review, because the driver's petition was premature and the record did not demonstrate that the hearing officer expressed his intention of sustaining the license suspension prior to the driver's filing of the petition for judicial review. Johnson v. State (In re Johnson), 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

Length of Suspension.

Driver's whose license was suspended for one-year upon failure of a blood alcohol test failed to prove that the enhancement beyond 90 days was improper since the burden was on the driver to produce evidence that he had not previously failed a test within a five-year period. Mahurin v. Idaho DOT (In re Mahurin), 140 Idaho 656, 99 P.3d 125 (Ct. App. 2004).

License Suspension.

Where a driver had a blood alcohol content of 0.23, his driver's license was properly suspended for one year for failure of the breath test. Mahurin v. Idaho DOT (In re Mahurin), 140 Idaho 656, 99 P.3d 125 (Ct. App. 2004).

Contrary to the district court's interpretation, neither this section nor § 18-8004 require that the state show the quantity or concentration of drugs in a driver's system and that such a quantity would cause impairment; the driver's urine test results indicated that Prozac was present in his system at the time of the accident, and the officer observed, and the video tape of the encounter showed, the driver had slurred speech, an impaired memory, seemed sleepy and failed the field sobriety tests, such that based on the evidence presented at the suspension hearing, it was proper for the hearing officer to infer that Prozac, in combination with the other drugs ingested, caused intoxication and consequently impaired the driver's ability to drive safely. Feasel v. Idaho Transp. Dep't (In re Driver's License Suspension of Feasel), 148 Idaho 312, 222 P.3d 480 (Ct. App. 2009).

When defendant, who held a CDL but was not operating a commercial vehicle when stopped, failed to file a timely request for an administrative hearing on the suspension of his license under this section, he waived his

right to challenge the suspension of his driver's license; however, he was still entitled to a separate administrative hearing relating to the suspension of his CDL under § 49-326(4). Wanner v. DOT (In re License Suspension of Wanner), 150 Idaho 164, 244 P.3d 1250 (2011).

License suspension was proper, because there was substantial evidence that the driver failed to show, by a preponderance of the evidence, that he did not violate § 49-644(1) and there was substantial evidence that the arresting officer properly conducted the fifteen-minute observation period prior to administering the breath alcohol test.. State v. Beyer (In re Beyer), — Idaho —, 304 P.3d 1206 (Ct. App. 2013).

The grounds for vacating a license suspension are limited to those enumerated in subsection (7); thus, a vacation based on a failure to forward the documentation listed in subsection (5) or a perceived irregularity in that documentation must be reversed. State v. Kalani-Keegan, 154 Idaho 1, 311 P. 3d 309, 311 P.3d 309 (Ct. App. 2013).

Test Equipment.

Appellate court would not vacate a decision suspending a driver's license for failing a breath test where the driver failed to meet his burden to prove that the Intoxilyzer 5000 used for his test was not maintained and calibrated in compliance with applicable standards for operation of the equipment; the maintenance logs went back to a period of 31 days prior to the driver's test. Mahurin v. Idaho DOT (In re Mahurin), 140 Idaho 656, 99 P.3d 125 (Ct. App. 2004).

Commercial driver failed to meet burden of proof that results of breath test were invalid by merely presenting evidence that the arresting officer had failed to send the testing unit's calibration records to the Idaho department of transportation. Attaching a calibration record to a test record was an act to be performed after the test was complete, but the validity of the test was not affected. Archer v. Dep't of Transp. (In re Archer), 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008).

Although a motorist argued that the results of his blood alcohol concentration (BAC) test were unreliable and inadmissible because the calibration solution for the Intoxilyzer 5000 was not changed within approximately 100 calibration checks in accordance with the state police's standard operating procedure, the motorist failed to meet his burden of proving by a preponderance of the evidence that his test was not conducted in accordance with applicable regulations or that the unit was not functioning properly. Wheeler v. Idaho Transp. Dep't, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009).

The plain meaning of this section provides for license suspension upon test results indicating a blood alcohol concentration of 0.08 or more, not 0.08 plus or minus any margin of error; any inherent margin of error in the test results was disregarded. McDaniel v. State (In re Driver's License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010).

The definition of "evidentiary test for alcohol concentration" in this section is the same as the definition in § 18-8004(4). Therefore, under this section, a violation can be shown simply by the results of a test for alcohol concentration that complies with the statutory requirements. The margin of error in the testing equipment is irrelevant. The equipment need not precisely measure the alcohol concentration in the person's blood. The test need only be based upon the correct formula, and the equipment must be properly approved and certified. Elias-Cruz v. Idaho DOT, 153 Idaho 200, 280 P.3d 703 (2012).

Cited in: Trottier v. State (In re Trottier), — Idaho —, 304 P.3d 292 (Ct. App. 2013); State v. Besaw, — Idaho —, 306 P.3d 219 (Ct. App. 2013).

18-8003. Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances and restitution orders. — (1) Only a licensed physician, qualified medical technologist, registered nurse, phlebotomist trained in a licensed hospital or educational institution or other medical personnel trained in a licensed hospital or educational institution to withdraw blood can, at the order or request of a peace officer, withdraw blood for the purpose of determining the content of alcohol, drugs or other intoxicating substances therein. This limitation shall not apply to the taking of a urine, saliva or breath specimen. For purposes of this section: (a) the term "qualified medical technologist" shall be deemed to mean a person who meets the standards of a "clinical laboratory technologist" as set forth by the then current rules and regulations of the social security administration of the United States department of health and human services pursuant to

subpart M of part 405, chapter III, title 20, of the code of federal regulation; and (b) the terms "phlebotomist" and "other medical personnel" shall be deemed to mean persons who meet the standards for the withdrawing of blood as designated and qualified by the employing medical facility or other employing entity of those persons.

(2) Upon conviction for a felony or misdemeanor violation under this chapter, except pursuant to sections 18-8001 and 18-8007, Idaho Code, or upon conviction for vehicular manslaughter pursuant to section 18-4006(3)(b), Idaho Code, the court may order restitution for the reasonable costs incurred by law enforcement agencies to withdraw blood samples, perform laboratory analysis, transport and preserve evidence, preserve evidentiary test results and for testimony relating to the analysis in judicial proceedings, including travel costs associated with the testimony. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A "conviction" for purposes of this subsection means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

(3) The person tested may, at his own expense, have a person of his own choosing, who is authorized to make a test, administer an evidentiary test for alcohol concentration in addition to the one administered at the request of a peace officer.

History.
I.C., § 18-8003, as added by 1984, ch. 22, § 2, p. 25; am. 1992, ch. 133, § 2, p. 416; am. 2009, ch. 108, § 2, p. 344.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 108, in the section catchline, added "and restitution orders"; added subsection (2); and redesignated former subsection (2) as subsection (3).

JUDICIAL DECISIONS

Cited in: State v. Allen, 145 Idaho 183, 177 P.3d 397 (Ct. App. 2008).

18-8004. Persons under the influence of alcohol, drugs or any other intoxicating substances.

JUDICIAL DECISIONS

ANALYSIS

Blood alcohol content.
Breathalyzer.
Burden of proof.
Construction.

Construction with other statutes.
Essential elements.
Evidence.
—Admission.
—Held sufficient.
—Measuring scientific reliability.
—Relevance.
Felony DUI.
Field sobriety tests.
Judicial review.
Jury trial.
Nonforensic evidence of blood alcohol concentration.
Observation of defendant.
Private property open to the public.
Reasonable suspicion.
Request for independent test.
—Access to phone.
Search and seizure.
Sentence.
—Upheld.
Statutory percentages.
Test results.
Type of test.
—HGN.
Waiting period.

Blood Alcohol Content.

Numerical blood alcohol content test result is relevant to a prosecution for driving under the influence (as opposed to a per se violation) under subsection (1)(a) only if a proper foundation is laid to assure the validity of the test result, including evidence extrapolating the result back to the time of the alleged offense. State v. Robinett, 141 Idaho 110, 106 P.3d 436 (2005).

Defendant was entitled to a new trial after a jury convicted him of aggravated driving under the influence and vehicular manslaughter; the trial court erred in denying defendant's motion in limine to exclude evidence of two blood alcohol content tests where the state elected to prosecute the DUI solely on the basis that defendant was driving impaired and not as a per se violation of this section based on the BAC results. State v. Robinett, 141 Idaho 110, 106 P.3d 436 (2005).

Breathalyzer.

Breathalyzer results were supressed where state trooper failed to monitor defendant for 15 minutes before administering test. State v. DeFranco, 143 Idaho 335, 144 P.3d 40 (Ct. App. 2006).

Where standard operating procedures and training manuals for the use of all breath test instruments conflict with the instructions for a specific breathalyzer as to when a breath test operator had to restart the monitoring period, the procedures for the specific monitoring machine must take precedence, and a license suspended following the less specific procedures must be reinstated. Schroeder v. State (In re Schroeder), 147 Idaho 476, 210 P.3d 584 (Ct. App. 2009).

Failure to abide by the regulations set forth in the standard operating procedures and training manuals renders a breathalyzer test inadmissible as evidence, absent expert testimony that the improperly administered test nevertheless produced reliable results. Schroeder v. State (In re Schroeder), 147 Idaho 476, 210 P.3d 584 (Ct. App. 2009).

Where the police officer left the room twice during the fifteen-minute monitoring period prior to administering a breathalyzer test, proper monitoring procedures were not followed and the test cannot be used as a basis for suspending a driver's license. Bennett v. State, 147 Idaho 141, 206 P.3d 505 (Ct. App. 2009).

The purpose of a monitoring period prior to the administration of breath tests is to rule out the possibility that alcohol or other substances have been introduced into the subject's mouth from the outside or by belching or regurgitation. To satisfy the observation requirement, the level of surveillance must be such as could reasonably be expected to accomplish that purpose. The 15-minute monitoring period is not an onerous burden. This foundational standard ordinarily will be met if the officer stays in close physical proximity to the test subject so that the officer's senses of sight, smell and hearing can be employed. Therefore, so long as the officer is continually in a position to use his senses, not just sight, to determine that the defendant did not belch, burp or vomit during the monitoring period, the observation complies with training manual instructions. Wilkinson v. State, 151 Idaho 784, 264 P.3d 680 (Ct. App. 2011).

A breath testing instrument is approved for evidentiary use if it yielded an acceptable performance verification within twenty-four hours after an evidentiary breath test, even if it had failed the most recent performance verification preceding the evidentiary test. Hubbard v. State, DOT (In re Hubbard), 152 Idaho 879, 276 P.3d 751 (Ct. App. 2012).

Subsection (4) does not require that the state introduce into evidence the Intoxilyzer 5000 certificates, as an element of proof. Subsection (4) sets the formula for evidentiary testing and requires that evidentiary testing be performed in an approved laboratory, but the section does not require that the certificates, including solution documentation, be admitted in order to obtain a conviction. State v. Kramer, 153 Idaho 29, 278 P.3d 431 (Ct. App. 2012).

Defendant did not establish that his breath alcohol (BAC) test results should not have been admitted into evidence. He did not show that the Idaho State Police (ISP) had abdicated its duty to adopt standards to ensure the reliability of BAC test results, because evidence in the record did not establish that the test procedures actually authorized by the ISP's standard operating procedures and applied in defendant's case were incapable of producing reliable tests. State v. Besaw, — Idaho —, 306 P.3d 219 (Ct. App. 2013).

Burden of Proof.

Commercial driver failed to meet burden of proof that results of breath test were invalid by merely presenting evidence that the arresting officer had failed to send the testing unit's calibration records to the Idaho department of transportation. Attaching a calibration record to a test record was an act to be performed after the test was complete, but the validity of the test was not affected. Archer v. Dep't of Transp. (In re Archer), 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008).

To elevate a charged offense from a misdemeanor to a felony, pursuant to § 18-8005(6), the state bears the burden of proof to show that a Wyoming statute, under which the defendant had been convicted within the past ten years, is "substantially conforming" to this section. State v. Schall, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 70 (Ct. App. Sept. 5, 2013).

Construction.

"Actual physical control" portion of this section presupposes the presence of a vehicle that can be controlled; the targeted risk does not exist when the vehicle is not operable, nor subject to being readily made operable, nor in motion, nor at risk of coasting. State v. Adams, 142 Idaho 305, 127 P.3d 208 (Ct. App. 2005).

Construction with Other Statutes.

Creditor's claim was entitled to priority status under 11 U.S.C.S. § 507(a)(10), which establishes a tenth-level priority for claims for death or injury resulting from the operation of a motor vehicle if such operation was unlawful because the debtor was intoxicated, because the evidence showed that the debtor violated paragraph (1)(a) when he sat in the passenger side of a truck while intoxicated and put the truck into four wheel drive. In re Loader, 406 B.R. 72 (Bankr. D. Idaho 2009).

Essential Elements.

To prove that a person is guilty of driving under the influence, the state must prove more than a driving impairment. The state must also present evidence, besides the impairment itself, to prove that the impairment was caused by alcohol, drugs, or intoxicating substances. In other words, proving an impairment does not prove the cause of the impairment. State v. Stark, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 30 (Ct. App. Apr. 4, 2013).

There was no question that defendant's ability to drive was impaired, as the officer testified that he saw defendant drive the wrong way on a one-way street, exhibit unusual behavior after being stopped, have a hard time staying awake, and perform poorly on certain sobriety tests. Although this was sufficient to prove defendant's ability to drive was impaired, the evidence was insufficient to prove that he was under the influence of drugs or substances, and some additional evidence was required to prove such. State v. Stark, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 30 (Ct. App. Apr. 4, 2013).

Evidence.

State laid a sufficient foundation for the admission of the alcohol concentration tests to be introduced into evidence through witness testimony; the expert's testimony stated that the Intoxilyzer 5000 was approved by the Idaho State Police almost two decades ago and was still in use. State v. Anderson, 145 Idaho 99, 175 P.3d 788 (2008).

—Admission.

In order to allow breath test results into evidence when there is not strict compliance with the administrative procedures for the calibration testing of the Intoxilyzer, the state needs to not only present an expert to testify, but that expert must also testify as to why procedural defects did not affect the reliability of test results in the particular case at issue. State v. Healy, 151 Idaho 734, 264 P.3d 75 (Ct. App. 2011).

—Held Sufficient.

Evidence was sufficient to support defendant's conviction of driving while under influ-

ence because: (1) two witnesses testified about their observations of defendant's erratic driving; (2) officers' testimony of defendant's inability to perform sobriety tests; (3) defendant's urine tested positive for four prescription medications; (4) a pharmacist testified that three of the medications could cause drowsiness, dizziness, and a lack of coordination, that when all four drugs were taken, their effects were additive, and that a small amount of alcohol would increase their effects; and (5) defendant admitted that he had drunk a can of beer. State v. Oliver, 144 Idaho 722, 170 P.3d 387 (2007).

Contrary to the district court's interpretation, neither § 18-8002A(4) nor this section require that the state show the quantity or concentration of drugs in a driver's system and that such a quantity would cause impairment; the driver's urine test results indicated that Prozac was present in his system at the time of the accident, and the officer observed, and the video tape of the encounter showed, the driver had slurred speech, an impaired memory, seemed sleepy and failed the field sobriety tests, such that based on the evidence presented at the suspension hearing, it was proper for the hearing officer to infer that Prozac, in combination with the other drugs ingested, caused intoxication and consequently impaired the driver's ability to drive safely. Feasel v. Idaho Transp. Dep't (In re Driver's License Suspension of Feasel), 148 Idaho 312, 222 P.3d 480 (Ct. App. 2009).

—Measuring Scientific Reliability.

Under this section, a violation can be shown simply by the results of a test for alcohol concentration that complies with the statutory requirements. The margin of error in the testing equipment is irrelevant. The equipment need not precisely measure the alcohol concentration in the person's blood. The test need only be based upon the correct formula, and the equipment must be properly approved and certified. Elias-Cruz v. Idaho DOT, 153 Idaho 200, 280 P.3d 703 (2012).

—Relevance.

Officer testified that defendant showed horizontal gaze nystagmus, but defendant was charged with driving under the influence of a drug or intoxicating substance, not driving under the influence of alcohol, and the state did not present evidence that the nystagmus test indicated impairment due to drugs or substances. Absent this, the officer's observations of nystagmus were irrelevant. State v. Stark, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 30 (Ct. App. Apr. 4, 2013).

Felony DUI.

Evidence of the previous conviction establishing the same name, same date of birth, same offense, and same county of conviction was sufficient to establish defendant's identity beyond reasonable doubt; thus, the evidence was sufficient to sustain the felony enhancement for the driving under influence conviction. State v. Lawyer, 150 Idaho 170, 244 P.3d 1256 (Ct. App. 2010).

Field Sobriety Tests.

Trial court correctly declined to require an evidentiary foundation showing the scientific reliability of the one-leg stand test and the walk-and-turn test as a condition for admission of the trooper's testimony about defendant's performance on them, because the testimony was not scientific, technical, or specialized in nature. State v. Besaw, — Idaho —, 306 P.3d 219 (Ct. App. 2013).

Judicial Review.

The Idaho administrative procedures act, § 67-5201 et seq., governs the review of transportation department decisions to deny, cancel, suspend, disqualify, revoke, or restrict a person's driver's license. Bennett v. State, 147 Idaho 141, 206 P.3d 505 (Ct. App. 2009).

Jury Trial.

In those few cases where the vehicle is at rest when first observed by an officer, issue of whether the vehicle is disabled will often be resolved by a few questions from the officer to occupants concerning the vehicle's condition and how and when it arrived at its present location; when there is evidence from which a fact-finder could sensibly conclude that the vehicle was reasonably capable of being rendered operable, the issue is for the jury. State v. Adams, 142 Idaho 305, 127 P.3d 208 (Ct. App. 2005).

Nonforensic Evidence of Blood Alcohol Concentration.

Debt from a state court judgment against the debtor was not excepted from discharge under 11 U.S.C.S. § 523(a)(9) because, despite evidence that the debtor had consumed alcohol before the accident that was at issue in the case, there was no chemical testing at the time and the evidence was insufficient to show that the debtor was discernibly impaired due to his alcoholic consumption for purposes of this section and the discharge exception at § 523(a)(9). Wood v. Loader (In re Loader), 417 B.R. 604 (Bankr. D. Idaho 2009).

Observation of Defendant.

So long as a police officer is continually in a position to use his senses, not just sight, to determine that the defendant did not belch, burp or vomit during the 15-minute monitoring period prior to administration of a breath alcohol test, that observation complies with the training manual instructions. Kimbley v. State (In re Kimbley), 154 Idaho 799, 302 P.3d 1072 (Ct. App. 2013).

Driver's license was properly suspended because the trooper adequately monitored the driver for the requisite time period before administering an alcohol breath test. During the 15-minute observation period, the trooper stood just to the side of the driver in front of the officer's vehicle; and, although the trooper had his head down during that time, he remained in the same position. Platz v. State (In re Platz), 154 Idaho 960, 303 P.3d 647 (Ct. App. 2013).

Private Property Open to the Public.

Arrest made in parking lot of an apartment complex occurred on "private property open to the public" where the officer had previously been to the property, he saw no gate, the lot appeared to be a public road, and there were no signs indicating that it was private property. State v. Martinez-Gonzalez, 152 Idaho 775, 275 P.3d 1 (Ct. App. 2012).

Reasonable Suspicion.

Motion to suppress evidence was denied because an officer had reasonable suspicion to stop defendant's vehicle for driving while under the influence based on the issuance of an attempt to locate (ATL) since the arresting officer was not required to have personal knowledge of the facts underlying the report so long as the person generating the report had the requisite reasonable suspicion; another officer had reasonable suspicion to issue the ATL based on the reliability and veracity of a driver who witnessed defendant's behavior, despite the fact that the officer did not speak to the other driver before issuing the order, and the knowledge obtained by dispatch from the driver was imputed to the issuing officer under the collective knowledge doctrine for purposes of determining whether reasonable suspicion to issue the ATL existed. State v. Van Dorne, 139 Idaho 961, 88 P.3d 780 (Ct. App. 2004).

In prosecution for driving under the influence, trial court erred in suppressing evidence obtained after police officers approached stopped vehicle which they had just observed driving without headlights and with its passenger door open and, after observing defendant curled up on the floor behind the front seats, opened door and ordered defendant to exit vehicle, because at that point, the officers possessed a reasonable suspicion to detain defendant driver for the traffic violations they had witnessed. State v. Irwin, 143 Idaho 102, 137 P.3d 1024 (Ct. App. 2006).

Request for Independent Test.

—Access to Phone.

Although police had no duty to make a telephone available to defendant to arrange for independent blood-alcohol testing when defendant did not request it, defendant's assertion of his right to obtain such a test after his release triggered a police duty not to unreasonably delay defendant's booking process and release after his arrest for driving under the influence so as to prevent a violation of defendant's due process rights. State v. Hedges, 143 Idaho 884, 154 P.3d 1074 (Ct. App. 2007).

Search and Seizure.

Exigent circumstances existed so as to permit officers to enter home of DUI suspect and make a warrantless arrest, where they were speaking with her at the threshold of the door while she was four feet inside the home, she smelled of alcohol and slurred her speech, she had admitted to drinking and driving, which was corroborated by witnesses, and where there was a risk of imminent destruction of evidence through the dissipation of her blood alcohol content. State v. Robinson, 144 Idaho 496, 163 P.3d 1208 (Ct. App. 2007).

Sentence.

Prohibited act of driving under the influence in Montana, substantially conformed to the prohibited act of driving under the influence in Idaho; thus, defendant's Montana felony DUI conviction fell within Idaho's DUI enhancement statute. State v. Schmoll, 144 Idaho 800, 172 P.3d 555 (Ct. App. 2007).

—Upheld.

Defendant's sentence, which included a four-year period of parole supervision after his release from one year incarceration, was reasonable because defendant was an alcoholic, this was his third conviction for driving while under the influence, and four months after he was arrested and charged in the instant case, he "went on a bender" and was hospitalized for alcohol detoxification. State v. Oliver, 144 Idaho 722, 170 P.3d 387 (2007).

Statutory Percentages.

Where a driver had a blood alcohol content (BAC) of 0.23, his driver's license was properly suspended for one year for failure of the breath test where the driver's BAC level was nearly three times the legal limit under Idaho law. Mahurin v. Idaho DOT (In re Mahurin), 140 Idaho 656, 99 P.3d 125 (Ct. App. 2004).

Test Results.

A single test result of less than .08 does not *ipsi facto* bar prosecution under this section, where there was evidence that showed that a .054 test result was not a valid measure of defendant's true breath concentration and two other samples registered at .08 or higher. State v. Turbyfill, 154 Idaho 641, 301 P.3d 647 (Ct. App. 2012).

Type of Test.

—HGN.

Because of the scientific acceptance of horizontal gaze nystagmus (HGN) evidence, it is

unnecessary for the proponents of HGN evidence to independently lay a foundation establishing the reliability of the testing method. State v. Besaw, — Idaho —, 306 P.3d 219 (Ct. App. 2013).

Waiting Period.

Officer did not violate procedures for administering breath alcohol test by timing 15 minute waiting period with his wristwatch rather than with the clock on the testing device. Dep't of Transp. v. Gibbar (In re Gibbar), 143 Idaho 937, 155 P.3d 1176 (Ct. App. 2006).

Evidence of the breath test was properly admitted where the officer's observation of defendant lasted at least fifteen minutes prior to the administration of the test, and the observation complied with the training manual instructions. State v. Stump, 146 Idaho 857, 203 P.3d 1256 (Ct. App. 2009).

Cited in: Reisenauer v. State (In re Reisenauer), 145 Idaho 948, 188 P.3d 890 (2008); Idaho v. Leslie, 146 Idaho 390, 195 P.3d 749 (Ct. App. 2008); Wheeler v. Idaho Transp. Dep't, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); Wood v. Loader (In re Loader), 424 B.R. 464 (Bankr. D. Idaho 2009); McDaniel v. State (In re Driver's License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); Thomas v. State (In re Cunningham), 150 Idaho 687, 249 P.3d 880 (Ct. App. 2011); State v. Jacobson, 150 Idaho 131, 244 P.3d 630 (Ct. App. 2010); State v. Crockett, 151 Idaho 674, 263 P.3d 139 (Ct. App. 2011).

RESEARCH REFERENCES

A.L.R. — Admissibility and sufficiency of extrapolation evidence in DUI prosecutions. 119 A.L.R.5th 379.

Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving while under influence of alcohol or drugs. 17 A.L.R.6th 757.

Validity, construction, and application of state "zero tolerance" laws relating to underage drinking and driving. 34 A.L.R.6th 623.

18-8004A. Penalties — Persons under 21 with less than 0.08 alcohol concentration. — (1) Any person found guilty of a violation of subsection (1)(d) of section 18-8004, Idaho Code, shall be guilty of a misdemeanor; and, for a first offense:

(a) Shall be fined an amount not to exceed one thousand dollars ($1,000);

(b) Shall have his driving privileges suspended by the court for a period of one (1) year, ninety (90) days of which shall not be reduced and during which period absolutely no driving privileges of any kind may be granted. After the period of absolute suspension of driving privileges has passed, the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary as deemed appropriate by the court;

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for any subsequent violation of the provisions of this section or any violation of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall be required to undergo an alcohol evaluation and otherwise comply with the requirements of section 18-8005(11) and (14), Idaho Code, as ordered by the court.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b), (c) or (d), Idaho Code, or any substantially conforming foreign criminal violation, as defined in section 18-8005(10), Idaho Code, notwithstanding the form of the judgment or withheld judgment, is guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of five (5) days, as required by 23 U.S.C. section 164, not to exceed thirty (30) days;
(b) Shall be fined an amount of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000);
(c) Shall have his driving privileges suspended by the court for a period not to exceed two (2) years, one (1) year of which shall be absolute and shall not be reduced and during which period absolutely no driving privileges of any kind may be granted;
(d) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period;
(e) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions of this section or section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and
(f) Shall undergo an alcohol evaluation and comply with the other requirements of subsections (11) and (14) of section 18-8005, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of subsection (1)(d) of section 18-8004, Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b), (c) or (d), Idaho Code, or any substantially conforming foreign criminal violation, within five (5) years, notwithstanding the form of the judgment or withheld judgment, shall be guilty of a misdemeanor; and:
(a) Shall be sentenced to jail for a mandatory minimum period of ten (10) days, as required by 23 U.S.C. section 164, not to exceed six (6) months;
(b) Shall be fined an amount of not less than one thousand dollars ($1,000) nor more than two thousand dollars ($2,000);
(c) Shall surrender his driver's license or permit to the court;
(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year, during which period absolutely no driving privileges of any kind may be granted, or until such person reaches the age of twenty-one (21) years, whichever is greater;
(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period; and
(f) Shall undergo an alcohol evaluation and comply with all other requirements imposed by the court pursuant to section 18-8005(11) and (14), Idaho Code.

(4) All provisions of section 18-8005, Idaho Code, not otherwise in conflict with or provided for in this section shall apply to any sentencing imposed under the provisions of this section.

(5) A person violating the provisions of section 18-8004(1)(d), Idaho Code, may be prosecuted under title 20, Idaho Code.

(6) Any person whose driving privileges are suspended, revoked, canceled or disqualified under the provisions of this chapter shall not be granted

privileges to operate a commercial motor vehicle during the period of suspension, revocation, cancellation or disqualification.

History.
I.C., § 18-8004A, as added by 1994, ch. 422, § 2, p. 1322; am. 1997, ch. 158, § 2, p. 457; am. 1999, ch. 246, § 1, p. 633; am. 2000, ch. 247, § 1, p. 692; am. 2002, ch. 335, § 1, p. 950; am. 2005, ch. 352, § 2, p. 1085; am. 2009, ch. 184, § 3, p. 584.

STATUTORY NOTES

Amendments.
The 2009 amendment, by ch. 184, updated references to subsections in § 18-8005, in light of the 2009 amendment of that section.

RESEARCH REFERENCES

A.L.R. — Claim of diabetic reaction or hypoglycemia as defense in prosecution for driving while under influence of alcohol or drugs. 17 A.L.R.6th 757.

Validity, construction, and application of state "zero tolerance" laws relating to underage drinking and driving. 34 A.L.R.6th 623.

18-8004C. Excessive alcohol concentration — Penalties. — Notwithstanding any provision of section 18-8005, Idaho Code, to the contrary:

(1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), Idaho Code, for the first time, but who has an alcohol concentration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, shall be guilty of a misdemeanor; and:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days, the first forty-eight (48) hours of which must be consecutive, and may be sentenced to not more than one (1) year;

(b) May be fined an amount not to exceed two thousand dollars ($2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of this section and violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, Idaho Code, and who has an alcohol concentration of 0.20, as defined in section 18-8004(4), Idaho Code, or more, as shown by an analysis of his blood, breath or urine by a test requested by a police officer, and who previously has been found guilty of or has pled guilty to one (1) or more violations of the provisions of section 18-8004, Idaho Code, in which the person had an alcohol concentration of 0.20 or more, or any substantially conforming foreign criminal violation wherein the defendant had an alcohol concentration of 0.20 or more, or any combination thereof,

within five (5) years, notwithstanding the form of judgment or withheld judgment shall be guilty of a felony; and:

(a) Shall be sentenced to the custody of the state board of correction for a term not to exceed five (5) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars ($5,000);

(c) Shall surrender his driver's license or permit to the court;

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for a period not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory license suspension period.

(3) Notwithstanding the provisions of subsections (1)(e) and (2)(d) of this section, a person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year, on each of the motor vehicles owned or operated, or both, by the offender, and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

(4) All the provisions of section 18-8005, Idaho Code, not in conflict with or otherwise provided for in this section, shall apply to this section.

(5) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section

means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

History.

I.C., § 18-8004C, as added by 1994, ch. 421, § 1, p. 1316; am. 2000, ch. 247, § 2, p. 692; am. 2009, ch. 184, § 4, p. 584; am. 2011, ch. 265, § 3, p. 710; am. 2014, ch. 63, § 4, p. 151.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 184, added subsection (3) and redesignated the subsequent subsections accordingly.

The 2011 amendment, by ch. 265, in paragraph (1)(c) and in the introductory paragraph in subsection (2), inserted "the provisions of" preceding "section 18-8004"; in paragraph (2)(a), inserted "a term" near the beginning; in paragraph (2)(d), inserted "a period"; and in subsection (3), inserted "or mental health court," "or other similar problem solving court utilizing community-based sentencing alternatives," and "or mental health court or other similar problem solving court" (three times).

The 2014 amendment, by ch. 63, substituted "a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year" for "an ignition interlock device is installed" near the middle of subsection (3).

Effective Dates.

Section 5 of S.L. 2011, ch 265 provided that the act should take effect on and after January 1, 2012.

JUDICIAL DECISIONS

Analysis

Blood alcohol content.
Independent test.
Previous conviction.

Blood Alcohol Content.

In DUI prosecution, evidence presented by the State was sufficient for a rational jury to make a finding of guilt beyond a reasonable doubt that defendant registered an alcohol concentration above 0.20; the jury determined that the evidence presented proved that the 0.22 and 0.24 test results were valid and that the 0.19 test result, although valid, should be disregarded State v. Anderson, 145 Idaho 99, 175 P.3d 788 (2008).

Independent Test.

An officer's failure to provide the warning under § 18-8002A that defendant had the right to obtain an additional, independent blood alcohol concentration test did not require suppression of the test results in a criminal prosecution. State v. Decker, 152 Idaho 142, 267 P.3d 729 (Ct. App. 2011).

Previous Conviction.

Evidence of a previous driving under the influence (DUI) conviction, with the excessive alcohol concentration enhancement, was admissible this section and § 18-8005(5) where the plain language of the statutes was unambiguous and did not preclude the use of a prior DUI conviction, with an enhanced penalty for excessive alcohol concentration, from being used in determining a repeat DUI offender felony enhancement. Idaho v. Leslie, 146 Idaho 390, 195 P.3d 749 (Ct. App. 2008).

Cited in: Wheeler v. Idaho Transp. Dep't, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); State v. Besaw, — Idaho —, 306 P.3d 219 (Ct. App. 2013).

18-8005. Penalties. — (1) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), Idaho Code, for the first time is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) May be sentenced to jail for a term not to exceed six (6) months;

(b) May be fined an amount not to exceed one thousand dollars ($1,000);

(c) Shall be advised by the court in writing at the time of sentencing of the penalties that will be imposed for subsequent violations of the provisions

of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney; and

(d) Shall have his driving privileges suspended by the court for a period of thirty (30) days which shall not be reduced and during which thirty (30) day period absolutely no driving privileges of any kind may be granted. After the thirty (30) day period of absolute suspension of driving privileges has passed, the defendant shall have driving privileges suspended by the court for an additional period of at least sixty (60) days, not to exceed one hundred fifty (150) days during which the defendant may request restricted driving privileges which the court may allow, if the defendant shows by a preponderance of the evidence that driving privileges are necessary for his employment or for family health needs.

(2) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(b), Idaho Code, for the first time is guilty of a misdemeanor and subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(3) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(c), Idaho Code, for the first time, is guilty of a misdemeanor and is subject to:

(a) The provisions of section 18-8005(1)(a), (b) and (c), Idaho Code; and

(b) The provisions of section 49-335, Idaho Code.

(4) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), and except as provided in section 18-8004C, Idaho Code, is guilty of a misdemeanor; and, except as provided in section 18-8004C, Idaho Code:

(a) Shall be sentenced to jail for a mandatory minimum period of not less than ten (10) days the first forty-eight (48) hours of which must be consecutive, and five (5) days of which must be served in jail, as required by 23 U.S.C. section 164, and may be sentenced to not more than one (1) year, provided however, that in the discretion of the sentencing judge, the judge may authorize the defendant to be assigned to a work detail program within the custody of the county sheriff during the period of incarceration;

(b) May be fined an amount not to exceed two thousand dollars ($2,000);

(c) Shall be advised by the court in writing at the time of sentencing, of the penalties that will be imposed for subsequent violations of the provisions of section 18-8004, Idaho Code, which advice shall be signed by the defendant, and a copy retained by the court and another copy retained by the prosecuting attorney;

(d) Shall surrender his driver's license or permit to the court;

(e) Shall have his driving privileges suspended by the court for an additional mandatory minimum period of one (1) year after release from

confinement, during which one (1) year period absolutely no driving privileges of any kind may be granted; and

(f) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the one (1) year mandatory license suspension period.

(5) If the person has pled guilty or was found guilty for the second time within ten (10) years of a violation of the provisions of section 18-8004(1)(b) or (c), Idaho Code, then the provisions of section 49-335, Idaho Code, shall apply.

(6) Except as provided in section 18-8004C, Idaho Code, any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, who previously has been found guilty of or has pled guilty to two (2) or more violations of the provisions of section 18-8004(1)(a), (b) or (c), Idaho Code, or any substantially conforming foreign criminal violation, or any combination thereof, within ten (10) years, notwithstanding the form of the judgment(s) or withheld judgment(s), shall be guilty of a felony; and

(a) Shall be sentenced to the custody of the state board of correction for not to exceed ten (10) years; provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive, and ten (10) days of which must be served in jail, as required by 23 U.S.C. section 164; and further provided that notwithstanding the provisions of section 18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars ($5,000);

(c) Shall surrender his driver's license or permit to the court;

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall, while operating a motor vehicle, be required to drive only a motor vehicle equipped with a functioning ignition interlock system, as provided in section 18-8008, Idaho Code, following the mandatory one (1) year license suspension period.

(7) Notwithstanding the provisions of subsections (4)(e) and (6)(d) of this section, any person who is enrolled in and is a participant in good standing in a drug court or mental health court approved by the supreme court drug court and mental health court coordinating committee under the provisions of chapter 56, title 19, Idaho Code, or other similar problem solving court utilizing community-based sentencing alternatives, shall be eligible for restricted noncommercial driving privileges for the purpose of getting to and from work, school or an alcohol treatment program, which may be granted by the presiding judge of the drug court or mental health court or other

similar problem solving court, provided that the offender has served a period of absolute suspension of driving privileges of at least forty-five (45) days, that a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year, on each of the motor vehicles owned or operated, or both, by the offender and that the offender has shown proof of financial responsibility as defined and in the amounts specified in section 49-117, Idaho Code, provided that the restricted noncommercial driving privileges may be continued if the offender successfully completes the drug court, mental health court or other similar problem solving court, and that the court may revoke such privileges for failure to comply with the terms of probation or with the terms and conditions of the drug court, mental health court or other similar problem solving court program.

(8) For the purpose of computation of the enhancement period in subsections (4), (6) and (9) of this section, the time that elapses between the date of commission of the offense and the date the defendant pleads guilty or is found guilty for the pending offense shall be excluded. If the determination of guilt against the defendant is reversed upon appeal, the time that elapsed between the date of the commission of the offense and the date the defendant pleads guilty or is found guilty following the appeal shall also be excluded.

(9) Notwithstanding the provisions of subsections (4) and (6) of this section, any person who has pled guilty or has been found guilty of a felony violation of the provisions of section 18-8004, Idaho Code, a felony violation of the provisions of section 18-8004C, Idaho Code, a violation of the provisions of section 18-8006, Idaho Code, a violation of the provisions of section 18-4006 3.(b), Idaho Code, notwithstanding the form of the judgment(s) or withheld judgment(s) or any substantially conforming foreign criminal felony violation, notwithstanding the form of the judgment(s) or withheld judgment(s), and within fifteen (15) years pleads guilty or is found guilty of a further violation of the provisions of section 18-8004, Idaho Code, shall be guilty of a felony and shall be sentenced pursuant to subsection (6) of this section.

(10) For the purpose of subsections (4), (6) and (9) of this section and the provisions of section 18-8004C, Idaho Code, a substantially conforming foreign criminal violation exists when a person has pled guilty to or has been found guilty of a violation of any federal law or law of another state, or any valid county, city, or town ordinance of another state substantially conforming to the provisions of section 18-8004, Idaho Code. The determination of whether a foreign criminal violation is substantially conforming is a question of law to be determined by the court.

(11) Any person who pleads guilty to or is found guilty of a violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, shall undergo, at his own expense, (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code,) and prior to the sentencing date, an alcohol evaluation by an alcohol evaluation facility approved by the Idaho department of health and welfare; provided however, if the defendant has no prior or pending charges with respect to the

provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and the court has the records and information required under subsections (12)(a), (b) and (c) of this section or possesses information from other reliable sources relating to the defendant's use or nonuse of alcohol or drugs which does not give the court any reason to believe that the defendant regularly abuses alcohol or drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of section 18-8004 or 18-8004C(1), Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of an alcohol evaluation with respect to a defendant's first violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or other assessment which evaluates the defendant's degree of alcohol abuse and need for alcohol treatment conducted within twelve (12) months preceding the date of the defendant's sentencing. In the event an alcohol evaluation indicates the need for alcohol treatment, the evaluation shall contain a recommendation by the evaluator as to the most appropriate treatment program, together with the estimated cost thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration in determining an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event, it shall be presumed that alcohol treatment is required unless the defendant makes a showing by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide the report as an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, in no event shall the person or facility doing the evaluation be the person or facility that provides the treatment unless this requirement is waived by the sentencing court, with the exception of federally recognized Indian tribes or federal military installations, where diagnosis and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court-ordered alcohol treatment for indigent defendants.

(12) At the time of sentencing, the court shall be provided with the following information:

(a) The results, if administered, of any evidentiary test for alcohol and/or drugs;

(b) A computer or teletype or other acceptable copy of the person's driving record;

(c) Information as to whether the defendant has pled guilty to or been found guilty of violation of the provisions of section 18-8004, 18-8004C or 18-8006, Idaho Code, or a similar offense within the past five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s); and

(d) The alcohol evaluation required in subsection (11) of this section, if any.

(13) A minor may be prosecuted for a violation of the provisions of section 18-8004 or 18-8004C, Idaho Code, under chapter 5, title 20, Idaho Code. In addition to any other penalty, if a minor pleads guilty to or is found guilty of a violation of the provisions of section 18-8004(1)(a), (b) or (c) or 18-8004C, Idaho Code, he shall have his driving privileges suspended or denied for an additional one (1) year following the end of any period of suspension or revocation existing at the time of the violation, or until he reaches the age of twenty-one (21) years, whichever period is greater. During the period of additional suspension or denial, absolutely no driving privileges shall be allowed.

(14) In the event that the alcohol evaluation required in subsection (11) of this section recommends alcohol treatment, the court shall order the person to complete a treatment program in addition to any other sentence which may be imposed, unless the court determines that alcohol treatment would be inappropriate or undesirable, in which event, the court shall enter findings articulating the reasons for such determination on the record. The court shall order the defendant to complete the preferred treatment program set forth in the evaluation, or a comparable alternative, unless it appears that the defendant cannot reasonably obtain adequate financial resources for such treatment. In that event, the court may order the defendant to complete a less costly alternative set forth in the evaluation, or a comparable program. Such treatment shall, to the greatest extent possible, be at the expense of the defendant. In the event that funding is provided for or on behalf of the defendant by an entity of state government, restitution shall be ordered to such governmental entity in accordance with the restitution procedure for crime victims, as specified under chapter 53, title 19, Idaho Code. Nothing contained herein shall be construed as requiring a court to order that a governmental entity shall provide alcohol treatment at government expense unless otherwise required by law.

(15) Any person who is disqualified, or whose driving privileges have been suspended, revoked or canceled under the provisions of this chapter, shall not be granted restricted driving privileges to operate a commercial motor vehicle.

History.

I.C., § 18-8005, as added by 1984, ch. 22, § 2, p. 25; am. 1986, ch. 201, § 1, p. 501; am. 1988, ch. 265, § 564, p. 549; am. 1989, ch. 88, § 62, p. 151; am. 1989, ch. 175, § 1, p. 424; am. 1989, ch. 366, § 2, p. 915; am. 1990, ch. 45, § 45, p. 71; am. 1992, ch. 115, § 40, p. 345; am. 1992, ch. 139, § 1, p. 429; am. 1992, ch. 338, § 1, p. 1011; am. 1993, ch. 272, § 1, p. 909; am. 1994, ch. 148, § 2, p. 336; am. 1994, ch. 421, § 2, p. 1316; am. 1994, ch. 422, § 3, p. 1322; am. 1997, ch. 114, § 1, p. 284; am. 1999, ch. 80, § 2, p. 227; am. 2000, ch. 240, § 1, p. 670; am. 2000, ch. 247, § 3, p. 692; am. 2003, ch. 286, § 1, p. 773; am. 2005, ch. 352, § 3, p. 1085; am. 2006, ch. 261, § 3, p. 800; am. 2009, ch. 11, § 6, p. 14; am. 2009, ch. 184, § 5, p. 584; am. 2010, ch. 331, § 1, p. 877; am. 2011, ch. 265, § 4, p. 710; am. 2014, ch. 63, § 5, p. 151.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 261, in subsection (1)(a), inserted "a term" following "jail for"; in the introductory paragraphs of subsection (4) and (5) and subsections (4)(g) and (5)(a), substituted "ten years" for "five years";

and in subsection (7), substituted "fifteen years" for "ten years" following "and within."

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 11, deleted "or (5)" following "section 18-8004(1)(a)" in the introductory paragraph in subsection (1).

The 2009 amendment, by ch. 184, in the first sentence in subsection (1), deleted "or (5)" following "section 18-8004(1)(a)"; redesignated former subsections (4)(g) and (5) as subsections (5) and (6), respectively; added subsection (7); and redesignated the subsequent subsections accordingly.

The 2010 amendment, by ch. 331, twice inserted "notwithstanding the form of the judgment(s) or withheld judgment(s)" in subsection (9).

The 2011 amendment, by ch. 265, in subsection (7), inserted "or mental health court," "or other similar problem solving court utilizing community-based sentencing alternatives," and "or mental health court or other similar problem solving court" (three times).

The 2014 amendment, by ch. 63, substituted "a state approved ignition interlock system is installed, and for repeat offenders it shall be maintained for not less than one (1) year" for "an ignition interlock device is installed" near the middle of subsection (7) and inserted "first" following "respect to a defendant's" in the first sentence subsection (11).

Effective Dates.

Section 5 of S.L. 2011, ch 265 provided that the act should take effect on and after January 1, 2012.

JUDICIAL DECISIONS

Analysis

Alcohol evaluation.
Collateral attack.
Child support.
Constitutionality.
Felony.
Penalty enhancement.
Prior convictions.
Sentence.
Suspension.

Alcohol Evaluation.

It is clear from the language of this section that it is the defendant's responsibility, not the court's, to ensure that an alcohol evaluation is completed and that a report is provided to the sentencing court for its review. State v. Corwin, 147 Idaho 893, 216 P.3d 651 (Ct. App. 2009).

Collateral Attack.

Under *Custis*, a defendant was not entitled to collaterally attack the validity of previous misdemeanor DUI convictions on constitutional grounds other than denial of right to counsel, where those convictions were being used to enhance a DUI charge from a misdemeanor to a felony. State v. Weber, 140 Idaho 89, 90 P.3d 314 (2004).

Child Support.

A finding in favor of the mother and father was improper where the department of health and welfare possessed authority, pursuant to § 56-203A to enforce child support regardless of the parents' marital status; however, the situation was limited to situations involving abandonment or nonsupport, so the supreme court remanded with directions to consider that issue with regard to the father. Dep't of Health & Welfare v. Housel, 140 Idaho 96, 90 P.3d 321 (2004).

Constitutionality.

Aggravated DUI defendant was not being prosecuted for any offense which he committed before the 2006 amendment to this section, and his exposure to prosecution for the present offense had not even arisen, let alone expired, when the statute was amended; defendant was not being punished in the present case for the offenses he committed in 2001 and 2003, and he was prosecuted only for the DUI that he committed in 2007, about a year after the Idaho legislature amended the statute. State v. Lamb, 147 Idaho 133, 206 P.3d 497 (Ct. App. 2009).

Felony.

To elevate a charged offense from a misdemeanor to a felony, pursuant to subsection (6), the state bears the burden of proof to show that a Wyoming statute, under which the defendant had been convicted within the past ten years, is "substantially conforming" to § 18-8004. State v. Schall, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 70 (Ct. App. Sept. 5, 2013).

Penalty Enhancement.

Prohibited act of driving under the influence in Montana, substantially conformed to the prohibited act of driving under the influ-

ence in Idaho; thus, defendant's Montana felony DUI conviction fell within Idaho's DUI enhancement statute. State v. Schmoll, 144 Idaho 800, 172 P.3d 555 (Ct. App. 2007).

Existence of a previous driving under the influence (DUI) conviction, with the excessive alcohol concentration enhancement, was admissible under this section and § 18-8004C where the plain language of the statutes was unambiguous and did not preclude the use of a prior DUI conviction, with an enhanced penalty for excessive alcohol concentration, from being used in determining a repeat DUI offender felony enhancement. Idaho v. Leslie, 146 Idaho 390, 195 P.3d 749 (Ct. App. 2008).

2006 amendment to this section placed defendant on notice that the DUI enhancement law was no longer as had been described to him upon his earlier convictions, and the argument that the trial courts' warnings given in his prior DUI cases somehow became part of defendant's plea agreements was frivolous; a trial court's advisement of the risk of future penalties is a warning designed to deter the defendant from committing future offenses, not a promise that put restraints on future prosecutions. State v. Lamb, 147 Idaho 133, 206 P.3d 497 (Ct. App. 2009).

Although defendant's 2004 driving under the influence (DUI) offense had been dismissed under § 19-2604 and the guilty plea set aside, the 2004 DUI could be used for penalty enhancement purposes, as the form of the judgment and the set aside guilty plea did not exempt defendant from the felony enhancement provisions in this section. State v. Reed, 149 Idaho 901, 243 P.3d 1089 (Ct. App. 2010).

Prior Convictions.

Evidence of the previous conviction establishing the same name, same date of birth, same offense, and same county of conviction was sufficient to establish defendant's identity beyond reasonable doubt; thus, the evidence was sufficient to sustain the felony enhancement for the driving under influence conviction. State v. Lawyer, 150 Idaho 170, 244 P.3d 1256 (Ct. App. 2010).

Sentence.

Defendant was properly convicted of felony driving under the influence (DUI) and misdemeanor resisting a public officer where the arresting officer noticed that defendant's eyes were glossy and that he smelled of alcohol, and defendant refused to get out of his car when the arresting officer attempted to take him into custody. The district court sentenced defendant to a unified term of five years, with a minimum period of confinement of two years, for DUI and a concurrent term of 90 days for resisting a public officer. State v. Patterson, 140 Idaho 612, 97 P.3d 479 (Ct. App. 2004).

Suspension.

Injured passenger adequately pleaded a cause of action against the Idaho division of motor vehicles (DMV) where her amended complaint alleged that, by issuing a drunk driver a license during a period of time when his driving privileges should have remained suspended, the DMV acted with gross negligence or recklessly, willfully, and wantonly. Cafferty v. State, 144 Idaho 324, 160 P.3d 763 (2007).

Trial court did not err by dismissing passenger's claim against the division of motor vehicles (DMV) on immunity grounds, and therefore the DMV was properly granted summary judgment, because the DMV's reinstatement of the drunk driver's license was not grossly negligent or reckless, willful, and wanton. Cafferty v. State, 144 Idaho 324, 160 P.3d 763 (2007).

Cited in: State v. Crockett, 151 Idaho 674, 263 P.3d 139 (Ct. App. 2011); State v. Schwab, 153 Idaho 325, 281 P.3d 1103 (Ct. App. 2012).

18-8006. Aggravated driving while under the influence of alcohol, drugs or any other intoxicating substances. — (1) Any person causing great bodily harm, permanent disability or permanent disfigurement to any person other than himself in committing a violation of the provisions of section 18-8004(1)(a) or (1)(c), Idaho Code, is guilty of a felony, and upon conviction:

(a) Shall be sentenced to the state board of correction for not to exceed fifteen (15) years, provided that notwithstanding the provisions of section 19-2601, Idaho Code, should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days, the first forty-eight (48) hours of which must be consecutive; and further provided that notwithstanding the provisions of section

18-111, Idaho Code, a conviction under this section shall be deemed a felony;

(b) May be fined an amount not to exceed five thousand dollars ($5,000);

(c) Shall surrender his driver's license or permit to the court; and

(d) Shall have his driving privileges suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his driving privileges suspended by the court for not to exceed five (5) years after release from imprisonment, during which time he shall have absolutely no driving privileges of any kind; and

(e) Shall be ordered by the court to pay restitution in accordance with chapter 53, title 19, Idaho Code.

(2) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

History.

I.C., § 18-8006, as added by 1984, ch. 22, § 2, p. 25; am. 1986, ch. 201, § 2, p. 501; am. 1989, ch. 88, § 63, p. 151; am. 1990, ch. 45, § 46, p. 71; am. 1997, ch. 114, § 2, p. 284; am. 2000, ch. 356, § 1, p. 1191; am. 2006, ch. 261, § 4, p. 800.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 261, substituted "fifteen years" for "ten years" in subsection (1)(a).

JUDICIAL DECISIONS

Multiple Charges.

Defendant was properly charged with multiple counts of aggravated DUI, and was not twice placed in jeopardy for a single offense of DUI, where in one incident, for which he was charged with driving under the influence, he caused serious injuries to two victims. State v. Turney, 147 Idaho 690, 214 P.3d 1169 (Ct. App. 2009).

Cited in: Wheeler v. Idaho Transp. Dep't, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); State v. Hansen, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 76 (Ct. App. Dec. 19, 2012).

18-8007. Leaving scene of accident resulting in injury or death.

JUDICIAL DECISIONS

ANALYSIS

Restitution.
Seriousness of injury.

Restitution.

Sizable restitution requirement of probation imposed on defendant who pleaded guilty to leaving the scene of an injury accident was upheld, even though victim's economic loss was a result of the accident rather than a direct result of defendant's criminal act of leaving, because defendant had consented to pay restitution as a part of his plea agreement. State v. Shafer, 144 Idaho 370, 161 P.3d 689 (Ct. App. 2007).

Seriousness of Injury.

Defendant's conviction for leaving the scene of an accident resulting in injury or death, was supported by sufficient evidence where, after striking a child on a bicycle, defendant did not remain at the scene of the accident or

provide defendant's name, contact information, insurance, registration, or display a driver's license. Fact that injury to child was very slight did not alter this conclusion. State v. Mead, 145 Idaho 378, 179 P.3d 341 (Ct. App. 2008).

Cited in: State v. Hansen, — Idaho —, — P.3d —, 2012 Ida. App. LEXIS 76 (Ct. App. Dec. 19, 2012).

18-8008. Ignition interlocks — Electronic monitoring devices. — (1) If a person is convicted, is found guilty, pleads guilty or receives a withheld judgment for violating any of the provisions of this chapter and has had any or all of a sentence or fine suspended for the violation, the court, in its discretion, may impose any, some, or all of the sanctions provided for in this section in addition to any other penalty or fine imposed pursuant to this chapter.

(2) The court shall order the person to have a state approved ignition interlock system installed on each of the motor vehicles owned or operated, or both, by the offender. The restriction shall be for a period not in excess of the time the person is on probation for the offense but not less than one (1) year for repeat offenders. The calibration setting at which the ignition interlock system will prevent the motor vehicle from being started shall be .025. As used in this section, the term "ignition interlock system" means breath alcohol ignition interlock device, certified by the transportation department, designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage. The transportation department shall by rule provide standards for the certification, installation, repair and removal of the devices. The court shall notify the transportation department of its order imposing a sanction pursuant to this subsection. The department shall attach or imprint a notation on the driver's license or other document granting the person restricted driving privileges of any person restricted under this subsection that the person may operate only a motor vehicle equipped with an ignition interlock system.

(3) The court may order the person to use electronic monitoring devices to record the person's movements if as a condition of probation the person has been given restricted driving privileges between certain times, has been placed under a curfew or has been ordered confined to his residence during times certain. Nothing in this subsection shall restrict the court's usage of electronic monitoring devices to supervise a defendant on probation for other offenses.

(4) If a court orders a defendant to use an ignition interlock system or electronic monitoring device pursuant to this section, and the court, or its probation department, furnishes the defendant with the device, the court may order the defendant to pay a reasonable fee for utilizing the equipment. All fees collected pursuant to this section shall be in addition to any other fines or penalty provided by law and shall be deposited in the court interlock device and electronic monitoring device fund created in section 18-8010, Idaho Code.

History.
I.C., § 18-8008, as added by 1988, ch. 339, § 2, p. 1007; am. 2000, ch. 247, § 4, p. 692; am. 2014, ch. 63, § 6, p. 151.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 63, in subsection (2), rewrote the first through third sentences which formerly read: "The court shall order the person while operating a motor vehicle to drive only a motor vehicle equipped with a functioning ignition interlock device, and the restriction shall be for a period not in excess of the time the person is on probation for the offense. The court shall establish a specific calibration setting at which the ignition interlock device will prevent the motor vehicle from being started and the period of time that the person shall be subject to the restriction. As used in this section, the term 'ignition interlock device' means breath alcohol analyzed ignition equipment, certified by the transportation department, designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage" and substituted "interlock system" for "interlock device" at the end of the last sentence; and substituted "interlock system" for "interlock device" in the first sentence of subsection (4)".

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of ignition interlock laws. 15 A.L.R.6th 375.

18-8009. Ignition interlocks — Assisting another in starting or operating — Penalty.

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of ignition interlock laws. 15 A.L.R.6th 375.

18-8010. Surcharge added to all fines.

JUDICIAL DECISIONS

Cited in: State v. Steelsmith, 153 Idaho 577, 288 P.3d 132 (Ct. App. 2012).

CHAPTER 81

TERRORIST CONTROL ACT

SECTION.

18-8105. Severability.

18-8105. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

History.

I.C., § 18-8105, as added by 1987, ch. 318, § 1, p. 669; am. 2008, ch. 27, § 5, p. 45.

STATUTORY NOTES

Amendments.
The 2008 amendment, by ch. 27, added the section heading.

CHAPTER 82

MONEY LAUNDERING

18-8201. Money laundering and illegal investment — Penalty — Restitution.

RESEARCH REFERENCES

A.L.R. — What constitutes "aggravated felony" for which alien can be deported or removed under § 237(a)(2)(A)(iii) of Immigration and Nationality Act (8 U.S.C. § 1227(a)(2)(A)(iii)) — Money laundering offenses under 8 U.S.C. § 1101(a)(43)(D). 67 A.L.R. Fed. 2d 407.

CHAPTER 83

SEXUAL OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY RIGHT-TO-KNOW ACT

SECTION.
18-8302. Findings.
18-8303. Definitions.
18-8304. Application of chapter — Rulemaking authority.
18-8305. Central registry — Notice to agencies.
18-8306. Notice of duty to register and initial registration.
18-8307. Registration.
18-8308. Verification of address and electronic monitoring of violent sexual predators.
18-8309. Duty to update registration information.
18-8310. Release from registration requirements — Expungement.
18-8310A. District court to release from registration requirements — Expungement.
18-8311. Penalties.
18-8312. Sexual offender management board — Appointment — Terms — Vacancies — Chairman — Quorum — Qualifications of members — Compensation of members.
18-8314. Powers and duties of the sexual offender management board.
SECTION.
18-8315. Compliance with open meeting law.
18-8316. Requirement for psychosexual evaluations upon conviction.
18-8317. Requirement for psychosexual evaluations upon release. [Repealed.]
18-8318. Offender required to pay for psychosexual evaluation.
18-8319. Notice of the board's determination. [Repealed.]
18-8320. Exception to notice of board's classification determination to offender. [Repealed.]
18-8321. Judicial review. [Repealed.]
18-8322. Violent sexual predators moving from other states. [Repealed.]
18-8323. Public access to sexual offender registry information.
18-8324. Dissemination of registry information.
18-8329. Adult criminal sex offenders — Prohibited access to school children — Exceptions.
18-8330. [Reserved.]
18-8331. Adult criminal sex offenders — Prohibited group dwelling — Exceptions.

18-8301. Short title.

JUDICIAL DECISIONS

Applicability.

Sex offender convicted prior to amendment did not contend that applying a 2009 amendment to the sex offender registration law to him would violate any constitutional provision. The amendment was specifically made retroactive by the legislature. Bottum v. Idaho State Police, 154 Idaho 182, 296 P.3d 388 (2013).

RESEARCH REFERENCES

A.L.R. — Application of *Apprendi v. New Jersey,* 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and *Blakely v. Washington,* 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004), to sex offender registration statutes. 51 A.L.R.6th 139.

Validity and applicability of state requirement that person convicted or indicted of sex offenses be subject to electronic location monitoring, including use of satellite or global positioning system. 57 A.L.R.6th 1.

Validity of state sex offender registration laws under ex post facto prohibitions. 63 A.L.R.6th 351.

Validity, construction and application of state sex offender registration statutes concerning level of classification — General principles, evidentiary matters, and assistance of counsel. 64 A.L.R.6th 1.

Validity, construction, and application of state sex offender registration statutes concerning level of classification — Initial classification determination. 65 A.L.R.6th 1.

Validity, construction, and application of state sex offender registration statutes concerning level of classification — Claims for downward departure. 66 A.L.R.6th 1.

Validity, construction, and application of state sex offender registration statutes concerning level of classification — Claims challenging upward departure. 67 A.L.R.6th 1.

Removal of adults from state sex offender registries. 77 A.L.R.6th 197.

Discharge from commitment and supervised release of civilly committed sex offender under state law. 78 A.L.R.6th 417.

Validity, construction, and application of federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C.A. § 16901 et seq., its enforcement provision, 18 U.S.C.A § 2250, and associated regulations. 30 A.L.R. Fed. 2d 213.

18-8302. Findings. — The legislature finds that sexual offenders present a danger and that efforts of law enforcement agencies to protect their communities, conduct investigations and quickly apprehend offenders who commit sexual offenses are impaired by the lack of current information available about individuals who have been convicted of sexual offenses who live within their jurisdiction. The legislature further finds that providing public access to certain information about convicted sexual offenders assists parents in the protection of their children. Such access further provides a means for organizations that work with youth or other vulnerable populations to prevent sexual offenders from threatening those served by the organizations. Finally, public access assists the community in being observant of convicted sexual offenders in order to prevent them from recommitting sexual crimes. Therefore, this state's policy is to assist efforts of local law enforcement agencies to protect communities by requiring sexual offenders to register with local law enforcement agencies and to make certain information about sexual offenders available to the public as provided in this chapter.

History.

I.C., § 18-8302, as added by 1998, ch. 411, § 2, p. 1275; am. 2011, ch. 311, § 1, p. 882.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 311, substituted "danger" for "significant risk of reoffense" near the beginning of the first sentence.

JUDICIAL DECISIONS

Non-Punitive Registration Requirements.

Sexual Offender Registration Notification and Community Right to Know Act does not require confinement of those designated as violent sexual predators, but rather imposes registration requirements to enhance public awareness of the potential danger posed by such offenders; if involuntary commitment of individuals designated as sexually violent predators is a non-punitive exercise of the state's valid police power, the imposition of additional registration requirements for such offenders also is non-punitive. Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009).

RESEARCH REFERENCES

A.L.R. — Validity and applicability of state requirement that person convicted or indicted of sex offenses be subject to electronic location monitoring, including use of satellite or global positioning system. 57 A.L.R.6th 1.

18-8303. Definitions. — As used in this chapter:

(1) "Aggravated offense" means any of the following crimes: 18-1506A (ritualized abuse of a child); 18-1508 (lewd conduct); 18-4003(d) (murder committed in the perpetration of rape); 18-4502 (first-degree kidnapping committed for the purpose of rape, committing an infamous crime against nature, committing any lewd and lascivious act upon any child under the age of sixteen years or for purposes of sexual gratification or arousal); 18-4503 (second degree kidnapping where the victim is an unrelated minor child and the kidnapping is committed for the purpose of rape, committing an infamous crime against nature, committing any lewd and lascivious act upon any child under the age of sixteen years or for purposes of sexual gratification or arousal); 18-6101 (rape, but excluding section 18-6101(1) where the victim is at least twelve years of age or the defendant is eighteen years of age); 18-6108 (male rape, but excluding section 18-6108(1) where the victim is at least twelve years of age or the defendant is eighteen years of age); 18-6608 (forcible sexual penetration by use of a foreign object); 18-8602(1) (sex trafficking); and any other offense set forth in section 18-8304, Idaho Code, if at the time of the commission of the offense the victim was below the age of thirteen years or an offense that is substantially similar to any of the foregoing offenses under the laws of another jurisdiction or military court or the court of another country.

(2) "Board" means the sexual offender management board described in section 18-8312, Idaho Code.

(3) "Central registry" means the registry of convicted sexual offenders maintained by the Idaho state police pursuant to this chapter.

(4) "Certified evaluator" means either a psychiatrist licensed by this state pursuant to chapter 18, title 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to chapter 23, chapter 32, or chapter 34, title 54, Idaho Code. Such person shall have by

education, experience and training, expertise in the assessment and treatment of sexual offenders, and such person shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in section 18-8314, Idaho Code.

(5) "Department" means the Idaho state police.

(6) "Employed" means full-time or part-time employment exceeding ten (10) consecutive working days or for an aggregate period exceeding thirty (30) days in any calendar year, or any employment which involves counseling, coaching, teaching, supervising or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit.

(7) "Foreign conviction" means a conviction under the laws of Canada, Great Britain, Australia or New Zealand or a conviction under the laws of any foreign country deemed by the U.S. department of state, in its country reports on human rights practices, to have been obtained with sufficient safeguards for fundamental fairness and due process.

(8) "Incarceration" means committed to the custody of the Idaho department of correction or department of juvenile corrections, but excluding cases where the court has retained jurisdiction.

(9) "Jurisdiction" means any of the following: a state, the District of Columbia, the commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, the federal government or a federally recognized Indian tribe.

(10) "Minor" means an individual who has not attained the age of eighteen (18) years.

(11) "Offender" means an individual convicted of an offense listed and described in section 18-8304, Idaho Code, or a substantially similar offense under the laws of another jurisdiction or military court or the court of another country deemed by the U.S. department of state, in its country reports on human rights practices, to have sufficient safeguards for fundamental fairness and due process.

(12) "Offense" means a sexual offense listed in section 18-8304, Idaho Code.

(13) "Psychosexual evaluation" means an evaluation which specifically addresses sexual development, sexual deviancy, sexual history and risk of reoffense as part of a comprehensive evaluation of an offender.

(14) "Recidivist" means an individual convicted two (2) or more times of any offense requiring registration under this chapter.

(15) "Residence" means the offender's present place of abode.

(16) "Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution or institution of higher education.

(17) "Violent sexual predator" means a person who was designated as a violent sexual predator by the sex offender classification board where such designation has not been removed by judicial action or otherwise.

History.

I.C., § 18-8303, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 349, § 1, p. 932; am. 2000, ch. 236, § 1, p. 663; am. 2000, ch. 469, § 30, p. 1450; am. 2001, ch. 194, § 1, p. 659; am. 2002, ch. 183, § 1, p. 532; am. 2003, ch. 235, § 1, p. 602; am. 2004, ch. 125, § 1, p. 416; am. 2009, ch. 250, § 1, p. 761; am. 2010, ch. 352, § 6, p. 920; am. 2011, ch. 311, § 2, p. 882.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 250, rewrote subsection (1) and, in subsection (7), inserted "or department of juvenile corrections."

The 2010 amendment, by ch. 352, near the end in subsection (1), deleted "or younger" following "eighteen years of age," and inserted "but excluding section 18-6108(1) where the victim is at least twelve years of age or the defendant is eighteen years of age."

The 2011 amendment, by ch. 311, added "or an offense that is substantially similar to any of the foregoing offenses under the laws of another jurisdiction or military court or the court of another country" to the end of subsection (1); substituted "sexual offender management board" for "sexual offender classification board" in subsection (2); added subsections (7), (9), and (10) and redesignated subsequent subsections accordingly; deleted former subsection (10), which read: "'Predatory' means actions directed at an individual who was selected by the offender for the primary purpose of engaging in illegal sexual behavior"; in present subsection (11), substituted "another jurisdiction" for "another state or in a federal, tribal" and added "deemed by the U.S. department of state, in its country reports on human rights practices, to have sufficient safeguards for fundamental fairness and due process"; and rewrote subsection (17), which formerly read: "'Violent sexual predator' means a person who has been convicted of an offense listed in section 18-8314, Idaho Code, and who has been determined to pose a high risk of committing an offense or engaging in predatory sexual conduct".

JUDICIAL DECISIONS

Analysis

Constitutionality.
Incarceration.

Constitutionality.

2009 amendments to Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act (SORA) did not actually create a new label or offender status and SORA did not define or use the term "aggravated offender"; the 2009 amendments did not attach additional notoriety to defendant's registration status, but, rather, just affected his ability to petition for exemption. State v. Johnson, 152 Idaho 41, 266 P.3d 1146 (2011).

Incarceration.

The definition of "incarceration" in this section can not be used to limit the application of § 18-8304(1)(d) to only those persons who were incarcerated or under probation or parole supervision in Idaho, on or after July 1, 1993. A sex offender incarcerated in Ohio on that date is subject to the registration requirements of this chapter. State v. Helmuth, 150 Idaho 291, 246 P.3d 400 (Ct. App. 2010).

Cited in: Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statute including "sexually motivated offenses" within definition of sex offense for purposes of sentencing or classification of defendant as sex offender. 30 A.L.R.6th 373.

18-8304. Application of chapter — Rulemaking authority. — (1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with intent to commit rape, infamous crime against

nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with intent to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-919 (sexual exploitation by a medical care provider), 18-1505B (sexual abuse and exploitation of a vulnerable adult), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), 18-1507 (sexual exploitation of a child), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child over the internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape, committing the infamous crime against nature or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-5605 (detention for prostitution), 18-5609 (inducing person under eighteen years of age into prostitution), 18-5610 (utilizing a person under eighteen years of age for prostitution), 18-5611 (inducing person under eighteen years of age to patronize a prostitute), 18-6101 (rape, but excluding 18-6101(1) where the defendant is eighteen years of age), 18-6108 (male rape, but excluding 18-6108(1) where the defendant is eighteen years of age), 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605 (crime against nature), 18-6608 (forcible sexual penetration by use of a foreign object), 18-6609 (video voyeurism where the victim is a minor or upon a second or subsequent conviction), 18-7804 (if the racketeering act involves kidnapping of a minor) or 18-8602(1), Idaho Code, (sex trafficking).

(b) On or after July 1, 1993, has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction or who has a foreign conviction that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and enters this state to establish residence or for employment purposes or to attend, on a full-time or part-time basis, any public or private educational institution including any secondary school, trade or professional institution or institution of higher education.

(c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction, including military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section and was required to register as a sex offender in any other state or jurisdiction when he established residency in Idaho.

(d) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(e) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(2) An offender shall not be required to comply with the registration provisions of this chapter while incarcerated in a correctional institution of the department of correction, a county jail facility, committed to the department of juvenile corrections or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(4) The department shall have authority to promulgate rules to implement the provisions of this chapter.

History.

I.C., § 18-8304, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 302, § 1, p. 753; am. 1999, ch. 349, § 2, p. 932; am. 2001, ch. 194, § 2, p. 659; am. 2003, ch. 145, § 2, p. 418; am. 2004, ch. 122, § 2, p. 410; am. 2005, ch. 233, § 1, p. 711; am. 2006, ch. 408, § 1, p. 1237; am. 2009, ch. 250, § 2, p. 761; am. 2010, ch. 352, § 7, p. 920; am. 2011, ch. 27, § 2, p. 67; am. 2011, ch. 311, § 3, p. 882; am. 2012, ch. 269, § 4, p. 751; am. 2012, ch. 271, § 1, p. 765; am. 2013, ch. 240, § 3, p. 566.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 408, in subsection (1)(a), substituted "18-6101(1)" for "18-6101 1.", and inserted "or where the defendant is exempted under subsection (4) of this section"; and added subsection (4).

The 2009 amendment, by ch. 250, in subsection (1)(a), inserted "18-919 (sexual exploitation by a medical care provider), 18-1505B (sexual abuse and exploitation of a vulnerable adult)," "18-5609 (inducing person under eighteen years of age into prostitution," and "or 18-8602(1), Idaho Code, (sex trafficking)"; and rewrote subsection (2), which formerly read: "The provisions of this chapter shall not apply to any such person while the person is incarcerated in a correctional institution of the department of correction, a county jail facility or committed to a mental health institution of the department of health and welfare."

The 2010 amendment, by ch. 352, in paragraph (1)(a), deleted "or younger" following "eighteen years of age," and inserted "but excluding 18-6108(1) where the defendant is eighteen years of age or where the defendant is exempted under subsection (4) of this section"; in the introductory paragraph in subsection (4), updated the first section reference and inserted "or 18-6108(2)"; and in paragraph (4)(b), updated the first section reference and inserted "or 18-6108(3) through (7)."

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 27, substituted "section 18-6101(3) through (9)" for "section 18-6101(3) through (8)" in paragraph (4)(b).

The 2011 amendment, by ch. 311, added "Rulemaking authority" to the section heading; in paragraph (1)(a), substituted "intent to commit rape" for "attempt to commit rape" (two times), inserted "18-5605 (detention for prostitution), 18-5611 (inducing person under eighteen years of age to patronize a prostitute), and 18-7804 (if the racketeering act involves kidnapping of a minor)" and substituted "18-6609 (video voyeurism where the victim is a minor or upon a second or subsequent conviction" for "upon a second or subsequent conviction under 18-6609 (video voyeurism)"; in paragraph (1)(b), substituted "in another jurisdiction or who has a foreign conviction" for "in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts" and added "or for employment purposes or to attend, on a full-time or part-time basis, any public or private educational institution including any secondary school, trade or professional institution or institution of higher education"; in paragraph(1)(c) substituted "another jurisdiction including military courts" for "another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts"; and added subsection (5).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 269, deleted "18-1507A (possession of sexually exploitative material for other than a commercial purpose)" following the entry for "18-1506A" in paragraph (1)(a).

The 2012 amendment, by ch 271, deleted "or where the defendant is exempted under

subsection (4) of this section" following "eighteen years of age" in the entry for "18-6101" and the entry for "18-6108" in paragraph (1)(a), deleted former subsection (4), regarding an exemption from registration based on the age of the defendant and the victim, and redesignated former subsection (5) as present subsection (4).

The 2013 amendment, by ch. 240, inserted "18-5610 (utilizing a person under eighteen years of age for prostitution)" in paragraph (1)(a).

JUDICIAL DECISIONS

ANALYSIS

Applicability.
Constitutionality.
Date of conviction.
Motion to dismiss denied.

Applicability.

Subsection (1)(d) extends the registration requirement of this chapter to persons who were adjudicated guilty of a covered crime before July 1, 1993, and who remained incarcerated or subject to supervision, in Idaho or any other jurisdiction, on or after that date. Thus, a sex offender incarcerated in Ohio on that date is subject to the registration requirements of this chapter. State v. Helmuth, 150 Idaho 291, 246 P.3d 400 (Ct. App. 2010).

Constitutionality.

Defendant's conviction for failing to register as a sex offender under former § 18-8304(1)(b) was reversed as the provision was unconstitutional; the state's interest in apprehending re-offending sex offenders was not rationally advanced by a classification that differentiated between offenders based solely upon their date of entry into the state. Further, the disparity in the statute's treatment of in-state offenders versus those who were convicted elsewhere and subsequently moved to Idaho violated the constitutional right to travel. State v. Dickerson, 142 Idaho 514, 129 P.3d 1263 (Ct. App. 2006).

Sex offender registration requirement does not constitute cruel and unusual punishment in violation of the constitutions of the state of Idaho and the United States because the requirement that sexual offenders register does not impose punishment; the purpose of Idaho's registration statute is not punitive, but remedial. It provides an essential regulatory purpose that assists law enforcement and parents in protecting children and communities. State v. Joslin, 145 Idaho 75, 175 P.3d 764 (2007).

Subdivision (1)(c) does not violate a sex offender's constitutional right to travel as he did not identify any privilege or immunity enjoyed by other citizens of Idaho that he had been denied, he had previously been required to register as a sex offender in Washington and moved to Idaho, and the state has a compelling and strong interest in alerting local law enforcement and citizens to the whereabouts of those that could reoffend. State v. Yeoman, 149 Idaho 505, 236 P.3d 1265 (2010).

Date of Conviction.

Subdivision (1)(c) does not incorporate by reference the convictions listed in subdivision (1)(a), but incorporates only the offenses listed there. Therefore, the date of conviction for one of those offenses is not part of the definition of the crime. A person convicted of rape in the state of Washington before July 1, 1993, was required to register as a sex offender when he moved to Idaho in 2007. State v. Yeoman, 149 Idaho 505, 236 P.3d 1265 (2010).

Motion to Dismiss Denied.

Defendant did not challenge the use of his prior conviction for communicating with a minor for immoral purposes to justify the enhancement for being a repeat sexual offender under § 19-2520G, and, as such, it made no difference whether the district court correctly analogized the offense of luring with a sexual motivation in Washington to second degree kidnapping of an unrelated minor child in Idaho; thus, the district court did not err in denying defendant's motion to dismiss the enhancement on the ground that luring with a sexual motivation had no substantially equivalent Idaho counterpart listed in this section requiring sex offender registration. State v. Ewell, 147 Idaho 31, 205 P.3d 680 (Ct. App. 2009).

Cited in: Bradley v. State, 151 Idaho 629, 262 P.3d 272 (Ct. App. 2011); State v. Forbes, 152 Idaho 849, 275 P.3d 864 (2012).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state statutory requirement that person convicted of sexual offense in other jurisdiction register or be classified as sexual offender in forum state. 34 A.L.R.6th 171.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Constitutional issues. 37 A.L.R.6th 55.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Duty to register, requirements for registration, and procedural matters. 38 A.L.R.6th 1.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Expungement, stay or deferral, exceptions, exemptions, and waiver. 39 A.L.R.6th 577.

Court's duty to advise sex offender as to sex offender registration consequences or other restrictions arising from plea of guilty, or to determine that offender is advised thereof. 41 A.L.R.6th 141.

Application of *Apprendi v. New Jersey,* 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and *Blakely v. Washington,* 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403, 6 A.L.R. Fed. 2d 619 (2004), to sex offender registration statutes. 51 A.L.R.6th 139.

18-8305. Central registry — Notice to agencies. — (1) The department shall establish and maintain a central sexual offender registry separate from other records maintained by the department. The information contained in the registry shall be in digital form or include links or identification numbers that provide access to the information in other databases in which it is included in digital form. The registry shall include, but is not limited to, the following information:

(a) Name and all aliases that the offender has used or under which the offender has been known including the offender's primary or given name, nicknames and pseudonyms generally, regardless of the context in which they are used, any designations or monikers used for self-identification in internet communications or postings and traditional names given by family or clan pursuant to ethnic or tribal tradition;

(b) A complete physical description of the person including any identifying marks, such as scars or tattoos, the offender's date of birth including any date the offender uses as his or her purported date of birth and the offender's social security number including any number the offender uses as his or her purported social security number;

(c) The criminal history of the offender including the jurisdiction of all arrests and convictions, the name under which the offender was convicted of each offense, the status of parole, probation or supervised release; registration status; and the existence of any outstanding arrest warrants for the offender;

(d) The text of the provision of law defining the criminal offense for which the sexual offender is registered as formulated at the time the offender was convicted;

(e) The name and location of each hospital, jail or penal institution to which the offender was committed for each offense covered under this chapter;

(f) The address or physical description of each residence at which the offender resides;

(g) The name and address of any place where the offender is a student or will be a student unless the offender is only participating in courses remotely through the mail or the internet;

(h) The license plate number and a description of any vehicle owned or regularly operated by the sexual offender including any vehicle the offender drives, either for personal use or in the course of employment, regardless of to whom the vehicle is registered. The term "vehicle" includes watercraft and aircraft. To the extent the vehicle does not have a license plate, a registration number or other identifying information shall be provided;

(i) Any e-mail or instant messaging address used by the offender;

(j) The offender's telephone numbers including, but not limited to, fixed location telephone numbers, voice over internet protocol numbers and cell phone numbers;

(k) The name and address of any place where the offender is employed or will be employed and the name and address of any place where the offender works as a volunteer or otherwise works without remuneration or if the offender does not have a fixed place of employment, a description of normal travel routes or the general areas in which the offender works;

(*l*) Information regarding any professional license maintained by the offender that authorizes the offender to engage in an occupation or carry out a trade or business;

(m) Information about the offender's passport, if any, and if the offender is an alien, information about documents establishing the offender's immigration status including document type and number information for such documents and a digitized copy of the documents;

(n) A set of fingerprints and palm prints of the offender;

(o) A current photograph of the offender; and

(p) A photocopy of a valid driver's license or identification card issued to the offender, if any.

(2) The department shall adopt rules relating to providing notice of address changes to law enforcement agencies, developing forms, operating the central registry, reviewing and correcting records, and expunging records of persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement or relief from registration has been entered pursuant to section 18-8310, Idaho Code.

(3) The department shall develop and distribute to appropriate agencies the standardized forms necessary for the administration of the registry and shall provide appropriate agencies with instructions for completing and submitting the forms. The attorney general shall approve the forms and instructions prior to distribution.

(4) The department shall notify the attorney general of the United States and appropriate law enforcement agencies of any failure by an offender to comply with the requirements of this chapter and shall revise the registry to reflect the nature of that failure.

History.

I.C., § 18-8305, as added by 1998, ch. 411, § 2, p. 1275; am. 2011, ch. 311, § 4, p. 882.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 311, in subsection (1), rewrote the second sentence, which formerly read: "The registry shall include, but is not limited to, fingerprints, photographs, and other information collected from submitted forms and other communications relating to notice of duty to register, sexual offender registration and notice of address change" and added paragraphs (a) to (p); deleted the former first two sentences in subsection (2), which read: "Upon receipt of information pursuant to section 18-8307, Idaho Code, the department shall notify the law enforcement agencies having jurisdiction where the offender resides or will reside, enter information in the central registry, and transmit the appropriate information as required by the federal bureau of investigation for inclusion in the national sexual offender registry. Upon receipt of a notice of an offender changing residence to another state, the department shall notify the central registry of the state to which the offender is moving"; and added subsection (4).

18-8306. Notice of duty to register and initial registration. — (1) When a person is sentenced for an offense identified in section 18-8304, Idaho Code, the prosecuting attorney shall seek and the court shall order a designated law enforcement agency to immediately photograph that person and obtain fingerprints and palm prints unless the person has been photographed and has provided fingerprints and palm prints previously for the same offense. Fingerprints, palm prints and photographs may be taken at the jail or correctional facility to which the person is remanded or sentenced. The fingerprints, palm prints and photographs taken pursuant to this subsection shall be submitted to the department as provided in section 67-3005, Idaho Code.

(2) A person convicted of an offense identified in section 18-8304, Idaho Code, and released on probation without a sentence of incarceration in a county jail or correctional facility, including release pursuant to a withheld judgment or release from any mental institution, shall be notified by the sentencing court of the duty to register pursuant to the provisions of this chapter and the offender shall register in accordance with this chapter no later than two (2) working days after sentence is imposed or judgment is withheld. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the defendant. The court shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(3) With respect to an offender convicted of a sexual offense identified in section 18-8304, Idaho Code, and sentenced to a period of immediate incarceration in a jail or correctional facility and subsequently released, placed on probation, or paroled, the department of correction or jail shall provide, prior to release from confinement, written notification of the duty to register and the offender shall register prior to his or her release. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the offender. The department of correction or jail shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(4) The sheriff of each county shall provide written notification, on a form provided by the Idaho transportation department and approved by the

attorney general, of the registration requirements of this chapter to any person who enters this state from another jurisdiction and makes an application for an identification card or a license to operate a motor vehicle in this state. The written notice shall be signed by the person and one (1) copy shall be retained by the sheriff's office and one (1) copy shall be provided to the person.

(5) The notification form provided by the department and approved by the attorney general shall:

(a) Explain the duty to register, the procedure for registration and penalty for failure to comply with registration requirements;

(b) Inform the offender of the requirement to provide notice of any change of address within Idaho or to another jurisdiction within two (2) working days of such change and of the immediate notification requirements set forth in subsections (2) and (3) of section 18-8309, Idaho Code;

(c) Inform the offender of the requirement to register in a new jurisdiction within two (2) working days of changing residence to that jurisdiction, becoming employed in that jurisdiction or becoming a student in that jurisdiction; and

(d) Obtain from the offender and agency or court, the information required for initial registration in the central registry as set forth in section 18-8305, Idaho Code, and any other information required by rules promulgated by the department.

(6) The official conducting the notice and initial registration shall ensure that the notification form is complete, that the offender has read and signed the form, and that a copy is forwarded to the central repository within three (3) working days of the registration.

(7) No person subject to registration shall willfully furnish false or misleading information when complying with registration and notification requirements of this chapter.

(8) An offender required to register under this chapter shall initially register in the jurisdiction in which he or she was convicted as well as any other jurisdiction requiring registration under this chapter. If the jurisdiction in which the offender is initially required to register is Idaho, the offender shall register in the county in which he or she primarily intends to reside. The county of initial registration shall then notify the department, which shall notify any other county or jurisdiction in which the offender is required to register.

History.

I.C., § 18-8306, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 249, § 4, p. 638; am. 1999, ch. 302, § 2, p. 753; am. 2004, ch. 126, § 2, p. 422; am. 2011, ch. 311, § 5, p. 882.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 311, in subsection (1), substituted "photograph that person and obtain fingerprints and palm prints unless the person has been photographed and has provided fingerprints and palm prints" for "fingerprint that person unless the person has been fingerprinted and photographed" in the first sentence and inserted "palm prints" in the second and third sentences; inserted "and the offender shall register in accordance with this chapter no later than two (2) working days after sentence is imposed or judgment is withheld" in the first sentence in subsection

(2); in subsection (3), inserted "immediate" preceding "incarceration" and "and the offender shall register prior to his or her release" in the first sentence; deleted former subsection (5), which read: "Notification of the duty to register as set forth in subsections (2) and (3) of this section shall constitute an initial registration for the purpose of establishing a record in the central registry"; redesignated former subsections (6) and (7) as present subsections (5) and (6); in paragraph (5)(b), substituted "jurisdiction" for "state" and "two (2) working days" for "five (5) working days" and added "and of the immediate notification requirements set forth in subsections (2) and (3) of section 18-8309, Idaho Code"; in paragraph (5)(c), substituted "in a new jurisdiction within two working days of" for "in a new state within ten (10) days" and "that jurisdiction" for "that state" and added "becoming employed in that jurisdiction or becoming a student in that jurisdiction"; in subsection (5)(d), substituted "as set forth in section 18-8305, Idaho Code, and any other information required" for "as prescribed"; in subsection (6), substituted "within three (3) working days of the registration" for "within the required time period"; deleted former subsection (8), which read, "Information required for initial registration in the central registry shall include, but is not limited to: name and aliases of the offender; social security number; physical descriptors; current address or physical description of current residence; offense for which convicted, sentence and conditions of release; treatment or counseling received; and risk assessment or special category of offender"; redesignated former subsection (9) as present subsection (7); and added present subsection (8).

18-8307. Registration. — (1) Registration shall consist of a form provided by the department and approved by the attorney general, which shall be signed by the offender and shall require the information set forth in subsection (1) of section 18-8305, Idaho Code.

(2) At the time of registration, the sheriff shall obtain a photograph and fingerprints, in a manner approved by the department, and require the offender to provide full palm print impressions of each hand. A violent sexual predator shall pay a fee of fifty dollars ($50.00) to the sheriff at the time of the first calendar quarter registration and ten dollars ($10.00) per registration every subsequent quarter in the same calendar year. All other offenders shall pay an annual fee of eighty dollars ($80.00) to the sheriff for registration. The sheriff may waive the registration fee if the violent sexual predator or other offender demonstrates indigency. The fees collected under this section shall be used by the sheriff to defray the costs of violent sexual predator and other sexual offender registration and verification and for electronic notification, law enforcement information sharing and tracking. Irrespective of the classification or designation of the offender or predator, each county shall cause forty dollars ($40.00) per offender per year of the fees collected under this section to be used for development, continuous use and maintenance of a statewide electronic notification, information sharing and tracking system as implemented by the Idaho sheriffs' association.

(3) The sheriff shall forward the completed and signed form, photograph, fingerprints and palm prints to the department within three (3) working days of the registration.

(a) The official conducting the registration shall ensure that the notification form is complete and that the offender has read and signed the form.

(b) No person subject to registration shall furnish false or misleading information when complying with registration and notification requirements of this chapter.

(4)(a) Within two (2) working days of coming into any county to establish residence, an offender shall register with the sheriff of the county. The offender thereafter shall register annually, unless the offender is desig-

nated as a violent sexual predator, in which case the offender shall register with the sheriff every three (3) months as provided in this section. If the offender intends to reside in another jurisdiction, the offender shall register in the other jurisdiction within two (2) days of moving to that jurisdiction and will not be removed from the sexual offender registry in Idaho until registration in another jurisdiction is complete.

(b) A nonresident required to register pursuant to section 18-8304(1)(b), Idaho Code, shall register with the sheriff of the county where employed or enrolled as a student within two (2) working days of the commencement of employment or enrollment as a student in an educational institution, provided that nonresidents employed in counseling, coaching, teaching, supervising or working with minors in any way, regardless of the period of employment, must register prior to the commencement of such employment.

(5) Registration shall be conducted as follows:

(a) For violent sexual predators the department shall mail a nonforwardable notice of quarterly registration to the offender's last reported address within three (3) months following the last registration;

(b) For all other sex offenders the department shall mail an annual, nonforwardable notice of registration to the offender's last reported address;

(c) Within five (5) days of the mailing date of the notice, the offender shall appear in person at the office of the sheriff in the county in which the offender is required to register for the purpose of completing the registration process;

(d) If the notice is returned to the department as not delivered, the department shall inform the sheriff with whom the offender last registered of the returned notice.

(6) All written notifications of duty to register as provided herein shall include a warning that it is a felony as provided in section 18-8327, Idaho Code, for an offender to accept employment in any day care center, group day care facility or family day care home, as those terms are defined in chapter 11, title 39, Idaho Code, or to be upon or to remain on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the offender's child or children.

(7) An offender shall keep the registration current for the full registration period. The full registration period is for life; however, offenders may petition for release from the full registration period as set forth in section 18-8310, Idaho Code.

History.

I.C., § 18-8307, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 302, § 3, p. 753; am. 1999, ch. 349, § 3, p. 932; am. 2004, ch. 270, § 4, p. 752; am. 2005, ch. 233, § 2, p. 711; am. 2006, ch. 178, § 10, p. 545; am. 2011, ch. 311, § 6, p. 882; am. 2013, ch. 131, § 1, p. 300.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 178, deleted "Initial" from the beginning of the section heading; deleted "whether initial, local or

annual" following "Registration" at the beginning of the introductory paragraph of subsection (1); in subsection (2), substituted "A violent sexual predator" for "An offender" and "per registration" for "at the time of each registration" in the second sentence, inserted the third sentence, inserted "violent sexual predator or other" in the fourth and fifth sentences, and added "and verification under section 18-8308, Idaho Code" at the end of the fifth sentence; in subsection (4)(a), substituted "two (2) working days" for "ten (10) days" in the first sentence, and "register annually, unless the offender is designated as a violent sexual predator, in which case the offender shall register with the sheriff every three (3) months as provided in this section" for "update the registration annually" in the second sentence; substituted "two (2) working days" for "ten (10) working days" in subsection (4)(b); deleted "Annual" from the beginning of the introductory paragraph of subsection (5); in subsection (5)(a), substituted "For violent sexual predators" for "On or about the first day of the month containing the anniversary date of the last registration which required fingerprints and a photograph" and added "within three (3) months following the last registration" at the end; added present subsection (5)(b) and redesignated former subsections (5)(b) and (c) as present subsections (5)(c) and (d); substituted "five (5) days" for "ten (10) days" in present subsection (5)(c); deleted former subsection (6), which read: "The sheriff, or appointed deputies, may visit the residence of a registered sexual offender within the county at any reasonable time to verify the address provided at the time of registration"; and redesignated former subsection (6) as (7).

The 2011 amendment, by ch. 311, in subsection (1), substituted "the information set forth in subsection (1) of section 18-8305, Idaho Code" for "the following information about the offender: (a) Name and all aliases which the person has used or under which the person has been known; (b) A complete description of the person including the date of birth and social security number; (c) Name of each offense enumerated in section 18-8304, Idaho Code, of which the person was convicted, where each offense was committed, where the person was convicted of each offense, and the name under which the person was convicted of each offense; (d) The name and location of each hospital, jail or penal institution to which the person was committed for each offense covered under this chapter; (e) School or college enrollment; and (f) Address or physical description of current residence and place of employment"; deleted "under section 18-8308, Idaho Code" from the end of subsection (2); inserted "and palm prints" in the introductory paragraph in subsection (3); in paragraph (4)(a), deleted "permanent or temporary" preceding "residence" in the first sentence, substituted "jurisdiction" for "state" three times and "two (2) days" for "ten (10) days" and added "and will not be removed from the sexual offender registry in Idaho until registration in another jurisdiction is complete"; updated a reference in paragraph (4)(b); in paragraph (5)(a), substituted "quarterly registration" for "annual registration"; in paragraph (5)(c), substituted "in the county in which the offender is required to register" for "with jurisdiction"; and added subsection (7).

The 2013 amendment, by ch. 131, in subsection (2), substituted "fifty dollars ($50.00) to the sheriff at the time of the first calendar quarter registration and ten dollars ($10.00) per registration every subsequent quarter in the same calendar year" for "ten dollars ($10.00) to the sheriff per registration" in the second sentence, substituted "eighty dollars ($80.00)" for "forty dollars ($40.00)" in the third sentence, added "and for electronic notification, law enforcement information sharing and tracking" at the end of the next-to-last sentence, and added the last sentence.

Compiler's Notes.

For more on the Idaho sheriff's association, see *http://idahosheriffs.org*.

Effective Dates.

Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

JUDICIAL DECISIONS

Cited in: State v. Joslin, 145 Idaho 75, 175 P.3d 764 (2007); Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009); State v. Lee, 153 Idaho 559, 286 P.3d 537 (2012).

RESEARCH REFERENCES

A.L.R. — Validity of state sex offender registration laws under ex post facto prohibitions. 63 A.L.R.6th 351.

Validity, construction and application of state sex offender registration statutes concerning level of classification — General principles, evidentiary matters, and assistance of counsel. 64 A.L.R.6th 1.

Validity, construction, and application of state sex offender registration statutes con-

cerning level of classification — Initial classification determination. 65 A.L.R.6th 1.

Validity, construction, and application of state sex offender registration statutes concerning level of classification — Claims for downward departure. 66 A.L.R.6th 1.

Validity, construction, and application of state sex offender registration statutes concerning level of classification — Claims challenging upward departure. 67 A.L.R.6th 1.

18-8308. Verification of address and electronic monitoring of violent sexual predators. — (1) The address or physical residence of an offender designated as a violent sexual predator shall be verified by the department between registrations.

(a) The procedure for verification shall be as follows:

(i) The department shall mail a nonforwardable notice of address verification every thirty (30) days between registrations, to each offender designated as a violent sexual predator.

(ii) Each offender designated as a violent sexual predator shall complete, sign and return the notice of address verification form to the department within seven (7) days of the mailing date of the notice. If the notice of address verification is returned to the department as not delivered, or if the signed notice is not returned on time, the department shall, within five (5) days, notify the sheriff with whom the offender designated as a violent sexual predator last registered.

(iii) The sheriff shall verify the address of the offender by visiting the offender's residence once every six (6) months or, if the offender fails to comply with the provisions of paragraph (a)(ii) of this subsection, at any reasonable time to verify the address provided at registration.

(2) The address or physical residence of any sex offender not designated as a violent sexual predator shall be verified by the department between registrations. The procedure for verification shall be as follows:

(a) The department shall mail a nonforwardable notice of address verification every four (4) months between annual registrations.

(b) Each offender shall complete, sign and return the notice of address verification form to the department within seven (7) days of the mailing date of the notice. If the notice of address verification is returned as not delivered or if the signed notice is not returned on time, the department shall notify the sheriff within five (5) days and the sheriff shall visit the residence of the registered offender at any reasonable time to verify the address provided at registration.

(3) Any individual designated as a violent sexual predator shall be monitored with electronic monitoring technology for the duration of the individual's probation or parole period as set forth in section 20-219(2), Idaho Code. Any person who, without authority, intentionally alters, tampers with, damages or destroys any electronic monitoring equipment required to be worn or used by a violent sexual predator shall be guilty of a felony.

(4) A sexual offender who does not provide a physical residence address at the time of registration shall report, in person, once every seven (7) days to the sheriff of the county in which he resides. Each time the offender reports to the sheriff, he shall complete a form provided by the department that includes the offender's name, date of birth, social security number and a

detailed description of the location where he is residing. The sheriff shall visit the described location at least once each month to verify the location of the offender.

History.

I.C., § 18-8308, as added by 1998, ch. 411, § 2, p. 1275; am. 2006, ch. 178, § 11, p. 545; am. 2009, ch. 156, § 1, p. 456; am. 2009, ch. 250, § 3, p. 761; am. 2010, ch. 79, § 2, p. 133; am. 2011, ch. 311, § 7, p. 882.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 178, deleted "of violent sexual predator" from the end of the section heading; in subsection (1), added "Violent sexual predators" at the beginning, and substituted "between registrations" for "every ninety (90) days between annual registrations" at the end; redesignated former subsections (2) to (2)(c) as present subsections (1)(a) to (1)(a)(ii); substituted "every thirty (30) days" for "quarterly" in present subsection (1)(a)(i); in present subsection (1)(a)(ii), substituted "seven (7) days" for "ten (10) days" in the first sentence, and inserted "within five (5) days" in the second sentence; added subsection (1)(a)(iii) and present subsection (2).

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 156, added subsection (3)[(4)].

The 2009 amendment, by ch. 250, in the section catchline, added "and electronic monitoring of violent sexual predators"; in subsection (1), deleted "Violent sexual predators" from the beginning; in subsection (2), deleted "All other sexual offenders" from the beginning; and added subsection (3).

The 2010 amendment, by ch. 79, corrected the subsection (3) designation which was duplicated by the 2009 legislation.

The 2011 amendment, by ch. 311, in paragraphs (1)(a)(ii) and (2)(b), added "or if the signed notice is not returned on time," and redesignated paragraphs in subsection (2).

Compiler's Notes.

As amended in 2006, 2009, 2010, and 2011, this section has material designated as (1)(a), but no (1)(b).

Effective Dates.

Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

RESEARCH REFERENCES

A.L.R. — Validity and applicability of state requirement that person convicted or indicted of sex offenses be subject to electronic location monitoring, including use of satellite or global positioning system. 57 A.L.R.6th 1.

18-8309. Duty to update registration information. — (1) If an offender subject to registration changes his or her name, street address or actual address, employment or student status, the offender shall appear in person within two (2) working days after the change at the office of the sheriff of the county where the offender is required to register and notify the sheriff of all changes in the information required for that offender in the sex offender registry. Provided however, nonresidents employed in this jurisdiction in counseling, coaching, teaching, supervising or working with minors in any way, regardless of the period of employment, shall register before the commencement of such employment. Within three (3) working days after receipt of the notice, the sheriff shall notify the department of the changed information and the department shall notify all other counties and jurisdictions in which the offender is required to register. An offender satisfies the notification requirements set forth in this subsection if he or she appears in another jurisdiction in which registration is required and notifies that jurisdiction of the changed information.

(2) An offender required to register shall immediately notify the depart-

ment of any lodging lasting seven (7) days or more, regardless of whether the lodging would be considered a residence as defined in section 18-8303, Idaho Code. The department shall immediately notify the jurisdiction in which the lodging will occur if different than the jurisdiction in which the offender is required to register.

(3) An offender required to register shall immediately notify the department of any changes in his or her vehicle information and of any changes in designations used for self-identification or routing in internet communications or postings or telephonic communications.

(4) If this jurisdiction is notified that an offender who is required to register is expected to commence residence, employment or school attendance in this jurisdiction, but the offender fails to appear for registration as required, this jurisdiction shall inform the jurisdiction that provided the notification that the offender failed to appear and shall follow the procedures for cases involving possible violations of registration requirements set forth in the rules of procedures promulgated by the department.

(5) An offender required to register in Idaho shall notify the county in which he or she is registered of his or her intent to commence residence, employment or school attendance outside of the United States. Once notified, the county shall notify the central registry, which shall notify all other counties and jurisdictions in which the offender is required to register and notify the United States marshals service and update the registry accordingly.

(6) Upon receipt of information pursuant to this section, the department shall notify the law enforcement agencies in the counties where the offender resides or will reside, enter information in the central registry and transmit the appropriate information as required pursuant to section 18-8324, Idaho Code. Upon receipt of a notice of an offender changing residence to another jurisdiction or entering another jurisdiction for employment purposes or to attend school, the department shall notify those agencies entitled to notification pursuant to section 18-8324, Idaho Code.

(7) The department shall notify the attorney general of the United States and appropriate law enforcement agencies of any failure by an offender to comply with the requirements of this chapter and revise the registry to reflect the nature of that failure.

History.

I.C., § 18-8309, as added by 2011, ch. 311, § 9, p. 882.

STATUTORY NOTES

Prior Laws.

Former § 18-8309, Change of address or name, which comprised I.C., § 18-8309, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 302, § 4, p. 753; am. 2006, ch. 178, § 12, p. 545 was repealed by S.L. 2011, ch. 311, § 8, effective July 1, 2011.

JUDICIAL DECISIONS

Insufficient Evidence.

Defendant's conviction for failure to register as a sex offender in violation of this section was vacated because there was insufficient

evidence that defendant changed his address or actual residence to a place in Idaho. (decided under 2001 version of section) State v. Lee, 153 Idaho 559, 286 P.3d 537 (2012).

18-8310. Release from registration requirements — Expungement. — (1) Registration under this act is for life; however, any offender, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the offender was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the offender shall be exempted from the duty to register as a sexual offender. If the offender was convicted in Idaho, the offender shall file his or her petition in the county in which he or she was convicted. If the offender was convicted in a jurisdiction other than Idaho, then the offender shall file his or her petition in the county in which he or she resides. In the petition the petitioner shall:

(a) Provide clear and convincing evidence that the petitioner has completed any periods of supervised release, probation or parole without revocation;

(b) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in section 18-8304, Idaho Code;

(c) Provide proof of service of such petition and supporting documents upon the county prosecuting attorney for the county in which the application is made and upon the central registry;

(d) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender;

(e) Provide clear and convincing evidence that the petitioner has successfully completed a sexual offender treatment program;

(f) Provide an affidavit demonstrating that the petitioner has no felony convictions during the period for which the petitioner has been registered; and

(g) Provide an affidavit demonstrating that the petitioner has committed no sex offenses during the period for which the petitioner has been registered.

(2) The county prosecuting attorney and the central registry may submit evidence, including by affidavit, rebutting the assertions contained within the offender's petition, affidavits or other documents filed in support of the petition.

(3) The district court may grant a hearing if it finds that the petition is sufficient. The court shall provide at least sixty (60) days' prior notice of the hearing to the petitioner, the county prosecuting attorney and the central registry. The central registry may appear or participate as a party.

(4) The court may exempt the petitioner from the registration requirement only after a hearing on the petition in open court and only upon proof by clear and convincing evidence and upon written findings of fact and conclusions of law by the court that:

(a) The petitioner has complied with the requirements set forth in subsection (1) of this section;

(b) The court has reviewed the petitioner's criminal history and has determined that the petitioner is not a recidivist, has not been convicted of an aggravated offense or has not been designated as a violent sexual predator; and

(c) It is highly probable or reasonably certain the petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8304, Idaho Code.

(5) Concurrent with the entry of any order exempting the petitioner from the registration requirement, the court may further order that any information regarding the petitioner be expunged from the central registry.

History.

I.C., § 18-8310, as added by 1998, ch. 411, § 2, p. 1275; am. 2000, ch. 236, § 2, p. 663; am. 2001, ch. 194, § 3, p. 659; am. 2009, ch. 68, § 1, p. 191; am. 2011, ch. 311, § 10, p. 882.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 68, designated two formerly undesignated paragraphs in subsection (1) as present subsections (2) and (3); in subsection (1)(c), added "and upon the central registry"; in subsection (2), added "and the central registry" at the end of the second sentence and added the last sentence; in the introductory paragraph in subsection (3), inserted "and upon written findings of fact and conclusions of law by the court"; added subsection (3)(a) and the subsection (3)(b) designation; and redesignated former subsection (2) as subsection (4), and made related redesignations.

The 2011 amendment, by ch. 311, in the introductory paragraph in subsection (1), added "Registration under this act is for life; however," and substituted "offender" for "person" three times in the first sentence and added the second sentence; in paragraph (1)(a), substituted "has completed any periods of supervised release, probation or parole without revocation" for "is not a risk to commit a new violation for any violent crime or crime identified in section 18-8304, Idaho Code"; inserted "and supporting documents" in paragraph (1)(c); added paragraphs (1)(e) through (1)(g); added subsection (2), renumbering the subsequent subsections; in subsections (4) and (5), substituted "registration requirement" for "reporting requirement"; added paragraph (4)(a), renumbering the subsequent paragraphs; and added "It is highly probable or reasonably certain" to the beginning of paragraph (4)(c).

Compiler's Notes.

The term "this act" in subsection (1) refers to S.L. 2011, ch. 311, which is codified as §§ 18-8302 to 18-8312 and 18-8314 to 18-8316, 18-8318, 18-1823, 18-8324, 9-340B, 19-2520G, and 67-2345. Probably this reference should be to "this chapter," being chapter 83, title 18, Idaho Code.

JUDICIAL DECISIONS

Analysis

Burden of proof.
Constitutionality.
Jurisdiction.
Release from registry.
Remedial nature of requirement.

Burden of Proof.

District court improperly held that sexual offender was required to prove that there was "no risk" of reoffense in order to be removed from the sex offender registry. Offender should have been allowed opportunity to present clear and convincing evidence that it was "highly probable" or "reasonably certain" that he would not reoffend. State v. Kimball, 145 Idaho 542, 181 P.3d 468 (2008) (see 2011 amendment).

Constitutionality.

Fact that a sexual offender, convicted of a

certain class of crime, may be required to register for life was not so punitive that it overrode Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act regulatory purpose; this was particularly so because the Legislature need not make particularized findings in the regulatory context. State v. Johnson, 152 Idaho 41, 266 P.3d 1146 (2011).

Jurisdiction.

Sexual offenders seeking exemption from Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act (SORA) had to petition the district court in a separate civil action; because defendant filed his petition in the already-dismissed criminal case, the district court lacked jurisdiction. State v. Johnson, 152 Idaho 41, 266 P.3d 1146 (2011).

Release from Registry.

Even though defendant's guilty plea for violating § 18-6608 was set aside and dismissed under § 19-2604(1), he still had to meet the requirements of this section in order to be released from the sex offender registry; because he could not do so, his motion for release from the registry was properly denied. State v. Robinson, 143 Idaho 306, 142 P.3d 729 (2006).

This section is the only mechanism by which a sex offender can receive relief from the requirements of the registration act. State v. Robinson, 143 Idaho 306, 142 P.3d 729 (2006).

Remedial Nature of Requirement.

Sex offender registration requirements under this section were improperly reinstated against defendant where the State's motion for reconsideration of an order vacating the reinstatement of those requirements was brought more than 14 days after entry of the order, and thus untimely under Idaho R. Civ. P. 59(e); the civil rules applied based on the remedial nature of the registration requirement. State v. Hartwig, 150 Idaho 326, 246 P.3d 979 (2011).

Cited in: State v. Joslin, 145 Idaho 75, 175 P.3d 764 (2007).

RESEARCH REFERENCES

A.L.R. — Validity, construction, and application of state sex offender registration statutes concerning level of classification — Claims for downward departure. 66 A.L.R.6th 1.

Removal of adults from state sex offender registries. 77 A.L.R.6th 197.

18-8310A. District court to release from registration requirements — Expungement. — Any person who was convicted under section 18-6101 1., Idaho Code, as it existed before July 1, 2010, where such person would not have been convicted under section 18-6101(1) or (2), Idaho Code, may petition the district court for a determination to be exempted from the duty to register as a sexual offender. If the district court finds that such person would not have been convicted under section 18-6101(1) or (2), Idaho Code, then the district court may exempt the petitioner from the duty to register as a sexual offender and may order that any information regarding the petitioner be expunged from the central registry. In the petition, the petitioner shall:

(1) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender; and

(2) Provide an affidavit that states the following:

(a) The specific underlying facts of petitioner's conviction and that such facts do not come within the provisions of section 18-6101(1) or (2), Idaho Code;

(b) The petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any crime identified in section 18-8304, Idaho Code; and

(c) The petitioner is not required to register as a sexual offender for any other reason set forth in this chapter.

History.
I.C., § 18-8310A, as added by 2012, ch. 271, § 2, p. 765.

18-8311. Penalties. — (1) An offender subject to registration who knowingly fails to register, verify his address, or provide any information or notice as required by this chapter shall be guilty of a felony and shall be punished by imprisonment in the state prison system for a period not to exceed ten (10) years and by a fine not to exceed five thousand dollars ($5,000). If the offender is on probation or other supervised release or suspension from incarceration at the time of the violation, the probation or supervised release or suspension shall be revoked and the penalty for violating this chapter shall be served consecutively to the offender's original sentence.

(2) An offender subject to registration under this chapter, who willfully provides false or misleading information in the registration required, shall be guilty of a felony and shall be punished by imprisonment in a state prison for a period not to exceed ten (10) years and a fine not to exceed five thousand dollars ($5,000).

History.
I.C., § 18-8311, as added by 1998, ch. 411, § 2, p. 1275; am. 2000, ch. 236, § 3, p. 663; am. 2006, ch. 178, § 13, p. 545; am. 2011, ch. 311, § 11, p. 882.

STATUTORY NOTES

Amendments.
The 2006 amendment, by ch. 178, inserted "verify his address" in the first sentence of subsection (1); and substituted "ten (10) years" for "five (5) years" throughout the section.

The 2011 amendment, by ch. 311, in subsection (1), added "knowingly" and "information or" near the beginning of the first sentence and deleted former subsection (3), which read: "An offender subject to registration under this chapter, who willfully evades service of the board's notice pursuant to section 18-8319, Idaho Code, shall be guilty of a felony and shall be punished by imprisonment in a state prison for a period not to exceed ten (10) years and a fine not to exceed five thousand dollars ($5,000)."

Effective Dates.
Section 14 of S.L. 2006, ch. 178 declared an emergency. Approved March 24, 2006.

JUDICIAL DECISIONS

Probation.
Because subsection (1) does not contain any language imposing a mandatory minimum sentence, circumscribing the court's inherent power to suspend a sentence, the district court did not err by suspending defendant's original sentence for sexual abuse of a child under the age of sixteen, and placing him on probation after a period of retained jurisdiction. State v. Olivas, — Idaho —, — P.3d —, 2013 Ida. App. LEXIS 72 (Ct. App. Sept. 6, 2013).

RESEARCH REFERENCES

A.L.R. — Admissibility of actuarial risk assessment testimony in proceeding to commit sex offender. 20 A.L.R.6th 607.

Validity, construction, and application of state statutes imposing criminal penalties for failure to register as required under sex offender or other criminal registration statutes. 33 A.L.R.6th 91.

18-8312. Sexual offender management board — Appointment — Terms — Vacancies — Chairman — Quorum — Qualifications of members — Compensation of members. — (1) A sexual offender management board is hereby created within the Idaho department of correction. The board shall consist of nine (9) voting members appointed by the governor by and with the advice and consent of the senate. Members shall be eligible for reappointment to the board without limitation. The board shall be charged with the advancement and oversight of sexual offender management policies and practices statewide.

(2) The terms of the members shall expire as follows: three (3) members on January 1, 2014; three (3) members on January 1, 2015; and three (3) members on January 1, 2016. Thereafter, any person appointed a member of the board shall hold office for three (3) years.

(3) Vacancies in the membership of the board shall be filled in the same manner in which the original appointments are made. Members appointed to a vacant position shall serve the remainder of the unexpired term.

(4) Qualifications of members.

(a) One (1) member of the board shall have, by education, experience and training, expertise in the assessment and treatment of adult sexual offenders.

(b) One (1) member of the board shall have, by education, experience and training, expertise in the assessment and treatment of juveniles who have been adjudicated for sexual offenses.

(c) One (1) member of the board shall have, by education, experience and training, expertise in cultural diversity and behavior of sexual offenders as they relate to assessment and treatment.

(d) One (1) member of the board shall be from the Idaho department of correction.

(e) One (1) member of the board shall be from the Idaho department of juvenile corrections.

(f) One (1) member of the board shall be an attorney who has experience in the prosecution of sexual offenders through the criminal justice process.

(g) One (1) member of the board shall be an attorney who has experience in the defense of sexual offenders through the criminal justice process.

(h) One (1) member of the board shall be from the Idaho sheriffs' association.

(i) One (1) member of the board shall be a representative of the public.

(5) In addition, there shall be advisory to the board, one (1) nonvoting member representing the judiciary who shall be appointed by the chief justice of the Idaho supreme court. The term of appointment for the judicial member shall be four (4) years.

(6) The board may create subcommittees to address specific issues. Such subcommittees may include board members as well as invited experts and other stakeholders or participants.

(7) The board shall elect a chairman from its members.

(8) A quorum shall exist when a majority of the board is present.

(9) Members shall be compensated as provided by section 59-509(o), Idaho Code.

History.
I.C., § 18-8312, as added by 1998, ch. 411, § 2, p. 1275; am. 2002, ch. 183, § 2, p. 532; am. 2011, ch. 311, § 12, p. 882.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 311, rewrote the section to the extent that a detailed comparison is impracticable.

JUDICIAL DECISIONS

Cited in: Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009).

18-8314. Powers and duties of the sexual offender management board. — (1) The board shall develop, advance and oversee sound sexual offender management policies and practices statewide as demonstrated by evidence-based best practices.

(2) The board shall carry out the following duties:

(a) Establish standards for psychosexual evaluations performed pursuant to section 18-8316, Idaho Code, and sexual offender treatment programs based on current and evolving best practices.

(b) Establish qualifications, set forth procedures for approval and certification and administer the certification process for:

(i) Professionals conducting psychosexual evaluations pursuant to section 18-8316, Idaho Code, or adjudication proceedings on juvenile sexual offenders;

(ii) Professionals providing treatment to adult or juvenile sexual offenders as ordered or required by the court, Idaho department of correction, Idaho commission of pardons and parole or the Idaho department of juvenile corrections; and

(iii) Professionals conducting postconviction sexual offender polygraphs as ordered or required by the court, Idaho department of correction or Idaho commission of pardons and parole.

(c) Establish a nonrefundable processing fee not to exceed one hundred fifty dollars ($150) for each initial certification and a nonrefundable processing fee not to exceed one hundred fifty dollars ($150) for each annual recertification.

(d) Set forth and administer procedures for quality assurance of the standards and qualifications established in this section.

(e) The board shall have authority to deny, revoke, restrict or suspend a certification if standards or qualifications are not met or to otherwise monitor a provider.

(f) Establish and implement standard protocols for sexual offender management, assessment and classification based on current and evolving best practices.

(3) The board shall have authority to promulgate rules to carry out the provisions of this chapter.

History.
I.C., § 18-8314, as added by 1998, ch. 411, § 2, p. 1275; am. 2000, ch. 235, § 1, p. 661; am. 2000, ch. 236, § 4, p. 663; am. 2002, ch. 183, § 3, p. 532; am. 2003, ch. 235, § 2, p. 602; am. 2004, ch. 125, § 2, p. 416; am. 2006,

ch. 379, § 1, p. 1172; am. 2010, ch. 352, § 8, p. 920; am. 2011, ch. 311, § 13, p. 882.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 379, in subsection (1), inserted "18-1507" and "or any violation of the duty to register as provided in this chapter"; and in subsection (2), inserted "or any violation of the duty to register as provided in this chapter, or offenders who are recidivists as defined in this chapter."

The 2010 amendment, by ch. 352, in subsection (1), deleted "or younger" following "(18) years of age," and inserted "(but excluding subsection (1) of such section when the offender is eighteen (18) years of age)."

The 2011 amendment, by ch. 311, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 2 of S.L. 2006, ch. 379 declared an emergency. Approved April 7, 2006.

JUDICIAL DECISIONS

Cited in: Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009).

18-8315. Compliance with open meeting law. — All meetings of the board shall be held in accordance with the open meeting law as provided in chapter 23, title 67, Idaho Code.

History.

I.C., § 18-8315, as added by 1998, ch. 411, § 2, p. 1275; am. 2000, ch. 469, § 31, p. 1450; am. 2004, ch. 125, § 3, p. 416; am. 2011, ch. 311, § 14, p. 882.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 311, rewrote the section to the extent that a detailed analysis is impracticable.

18-8316. Requirement for psychosexual evaluations upon conviction. — If ordered by the court, an offender convicted of any offense listed in section 18-8304, Idaho Code, may submit to an evaluation to be completed and submitted to the court in the form of a written report from a certified evaluator as defined in section 18-8303, Idaho Code, for the court's consideration prior to sentencing and incarceration or release on probation. The court shall select the certified evaluator from a central roster of evaluators compiled by the sexual offender management board. A certified evaluator performing such an evaluation shall be disqualified from providing any treatment ordered as a condition of any sentence, unless waived by the court. An evaluation conducted pursuant to this section shall be done in accordance with the standards established by the board pursuant to section 18-8314, Idaho Code.

History.

I.C., § 18-8316, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 380, § 1, p. 1044; am. 2003, ch. 235, § 3, p. 602; am. 2011, ch. 311, § 15, p. 882.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 311, substituted "may submit" for "shall submit" in the first sentence; substituted "sexual offender management board" for "sexual offender classification board"; and deleted the former next-to-last sentence, which read: "For offenders convicted of an offense listed in section 18-8314, Idaho Code, the evaluation shall state whether it is probable that the offender is a violent sexual predator."

JUDICIAL DECISIONS

ANALYSIS

Right to counsel.
Self-incrimination.

Right to Counsel.

Denial of a motion for postconviction relief was reversed because defendant had the right to counsel during a psychosexual evaluation, the Fifth Amendment was implicated due to the fact that punishment could have been enhanced for statements made, and counsel was ineffective for failing to advise the inmate of his Fifth Amendment rights where the sentencing court relied heavily on the evaluation in imposing a life sentence for rape. Estrada v. State, 143 Idaho 558, 149 P.3d 833 (2006), cert. denied, 552 U.S. 811, 128 S. Ct. 51, 169 L. Ed. 2d 13 (2007).

Self-incrimination.

Fifth Amendment applies to psychosexual evaluations. Estrada v. State, 143 Idaho 558, 149 P.3d 833 (2006), cert. denied, 552 U.S. 811, 128 S. Ct. 51, 169 L. Ed. 2d 13 (2007).

Cited in: Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009); Hughes v. State, 148 Idaho 448, 224 P.3d 515 (Ct. App. 2009); Schultz v. State, 153 Idaho 791, 291 P.3d 474 (Ct. App. 2012).

18-8317. Requirement for psychosexual evaluations upon release. [Repealed.]

Repealed by S.L. 2011, ch. 311, § 16, effective July 1, 2011.

History.

I.C., § 18-8317, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 302, § 5, p. 753; am. 2003, ch. 235, § 4, p. 602; am. 2004, ch. 125, § 4, p. 416.

18-8318. Offender required to pay for psychosexual evaluation. — The offender shall be required to pay for the cost of the psychosexual evaluations performed under this chapter, unless the offender demonstrates indigency. In such case, the psychosexual evaluation performed pursuant to section 18-8316, Idaho Code, shall be paid for by the county. As a condition of sentence, indigent offenders for whom the county has paid the cost of evaluation performed pursuant to section 18-8316, Idaho Code, shall be required to repay the county for the cost.

History.

I.C., § 18-8318, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 302, § 6, p. 753; am. 2011, ch. 311, § 17, p. 882.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 311, deleted "and the evaluation performed pursuant to section 18-8317, Idaho Code, shall be paid for by the department of correction" from the end of the second sentence.

18-8319. Notice of the board's determination. [Repealed.]

Repealed by S.L. 2011, ch. 311, § 18, effective July 1, 2011.

History.
I.C., § 18-8319, as added by 1998, ch. 411, § 2, p. 1275; am. 2000, ch. 236, § 5, p. 663; am. 2000, ch. 237, § 1, p. 667; am. 2001, ch. 200, § 1, p. 680; am. 2001, ch. 286, § 1, p. 1021; am. 2004, ch. 125, § 5, p. 416.

18-8320. Exception to notice of board's classification determination to offender. [Repealed.]

Repealed by S.L. 2011, ch. 311, § 19, effective July 1, 2011.

History.
I.C., § 18-8320, as added by 1998, ch. 411, § 2, p. 1275.

18-8321. Judicial review. [Repealed.]

Repealed by S.L. 2011, ch. 311, § 20, effective July 1, 2011.

History.
I.C., § 18-8321, as added by 1998, ch. 411, § 2, p. 1275; am. 2002, ch. 182, § 1, p. 530.

18-8322. Violent sexual predators moving from other states. [Repealed.]

Repealed by S.L. 2011, ch. 311, § 21, effective July 1, 2011.

History.
I.C., § 18-8322, as added by 1998, ch. 411, § 2, p. 1275.

18-8323. Public access to sexual offender registry information. — Information within the sexual offender registry collected pursuant to this chapter is subject to release only as provided by this section.

(1) The department or sheriff shall provide public access to information contained in the central sexual offender registry by means of the internet.

(2) Information that shall be made available to the public is limited to:

(a) The offender's name including any aliases or prior names;

(b) The offender's date of birth;

(c) The address of each residence at which the offender resides or will reside and, if the offender does not have any present or expected residence address, other information about where the offender has his or her home or habitually lives;

(d) The address of any place where the offender is a student or will be a student;

(e) A physical description of the offender;

(f) The offense for which the offender is registered and any other sex offense for which the offender has been convicted and the place of the convictions;

(g) A current photograph of the offender; and

(h) Temporary lodging information including the place and the period of

time the offender is staying at such lodging. "Temporary lodging" means any place in which the offender is staying when away from his or her residence for seven (7) or more days. If current information regarding the offender's residence is not available because the offender is in violation of the requirement to register or cannot be located, then the website shall so note.

(3) The following information shall not be disclosed to the public:

(a) The identity of the victim;

(b) The offender's social security number;

(c) Any reference to arrests of the offender that did not result in conviction;

(d) Any internet identifier associated with and/or provided by the offender;

(e) Any information pertaining to the offender's passports and immigration documents; and

(f) Any information identifying any person related to, living with, working for, employing or otherwise associated with a registered sexual offender.

(4) Where a crime category such as "incest" may serve to identify a victim, that crime will be reported as a violation of section 18-1506, Idaho Code.

(5) The department shall include a cautionary statement relating to completeness, accuracy and use of registry information when releasing information to the public or noncriminal justice agencies as well as a statement concerning the penalties provided in section 18-8326, Idaho Code, for misuse of registry information.

(6) Information released pursuant to this section may be used only for the protection of the public.

(7) Further dissemination of registry information by any person or entity shall include the cautionary statements required in subsection (5) of this section.

History.
I.C., § 18-8323, as added by 1998, ch. 411, § 2, p. 1275; am. 1999, ch. 302, § 7, p. 753; am. 2001, ch. 195, § 1, p. 662; am. 2011, ch. 311, § 22, p. 882.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 311, rewrote the section to the extent that a detailed comparison is impracticable.

JUDICIAL DECISIONS

Cited in: Smith v. State, 146 Idaho 822, 203 P.3d 1221 (2009).

18-8324. Dissemination of registry information. — (1) The department shall, within three (3) business days, disseminate any registration information collected under this chapter, including any changes in registry information, to:

(a) The attorney general of the United States for inclusion in the national sex offender registry or other appropriate databases;

(b) Each school and public housing agency in each area in which the offender resides, is an employee or is a student;

(c) Each jurisdiction where the sexual offender resides, is an employee or is a student and each jurisdiction from or to which a change of residence, employment or student status occurs;

(d) Criminal justice agencies through the public safety and security information system established in section 19-5202, Idaho Code;

(e) Any agency responsible for conducting employment-related background checks under section 3 of the national child protection act of 1993, 42 U.S.C. section 5119a;

(f) Social service entities responsible for protecting minors in the child welfare system;

(g) Volunteer organizations in which contact with minors or other vulnerable adults might occur; and

(h) Any organization, company or individual who requests notification of changes in registry information.

(2) Registry information provided under this section shall be used only for the administration of criminal justice or for the protection of the public as permitted by this chapter.

(3) The department shall include a cautionary statement relating to completeness, accuracy and use of registry information when releasing information to the public or noncriminal justice agencies as well as a statement concerning the penalties provided in section 18-8326, Idaho Code, for misuse of registry information.

(4) Information released pursuant to this section may be used only for the protection of the public.

(5) Further dissemination of registry information by any person or entity shall include the cautionary statements required in subsection (3) of this section.

History.

I.C., § 18-8324, as added by 1998, ch. 411, § 2, p. 1275; am. 2003, ch. 28, § 1, p. 100; am. 2005, ch. 115, § 1, p. 371; am. 2006, ch. 35, § 1, p. 98; am. 2011, ch. 311, § 23, p. 882.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 35, in subsection (7), added "and within this time period shall also disseminate the name, address, photograph of said person and offense the offender has committed to all major local radio and television media" at the end of the first sentence, and substituted "sex offender. Fees shall be deposited in a violent sexual predator account maintained by the sheriff to be used for the purpose of public education relating to violent sexual predators and to offset the cost of newspaper publication" for "sex offender to offset the cost of publication" at the end of the last sentence.

The 2011 amendment, by ch. 311, rewrote the section to the extent that a detailed comparison is impracticable.

18-8329. Adult criminal sex offenders — Prohibited access to school children — Exceptions. — (1) If a person is currently registered

or is required to register under the sex offender registration act as provided in chapter 83, title 18, Idaho Code, it is a misdemeanor for such person to:

(a) Be upon or to remain on the premises of any school building or school grounds in this state, or upon other properties posted with a notice that they are used by a school, when the person has reason to believe children under the age of eighteen (18) years are present and are involved in a school activity or when children are present within thirty (30) minutes before or after a scheduled school activity.

(b) Knowingly loiter on a public way within five hundred (500) feet from the property line of school grounds in this state, including properties posted with a notice that they are used by a school, when children under the age of eighteen (18) years are present and are involved in a school activity or when children are present within thirty (30) minutes before or after a scheduled school activity.

(c) Be in any conveyance owned or leased by a school to transport students to or from school or a school-related activity when children under the age of eighteen (18) years are present in the conveyance.

(d) Reside within five hundred (500) feet of the property on which a school is located, measured from the nearest point of the exterior wall of the offender's dwelling unit to the school's property line, provided however, that this paragraph (d) shall not apply if such person's residence was established prior to July 1, 2006.

The posted notices required in this subsection (1) shall be at least one hundred (100) square inches, shall make reference to section 18-8329, Idaho Code, shall include the term "registered sex offender" and shall be placed at all public entrances to the property.

(2) The provisions of subsections (1)(a) and (1)(b) of this section shall not apply when the person:

(a) Is a student in attendance at the school; or

(b) Resides at a state licensed or certified facility for incarceration, health or convalescent care; or

(c) Is exercising his right to vote in public elections; or

(d) Is taking delivery of his mail through an official post office located on school grounds; or

(e) Stays at a homeless shelter or resides at a recovery facility if such shelter or facility has been approved for sex offenders by the county sheriff or municipal police chief; or

(f) Contacts the school district office annually and prior to his first visit of a school year and has obtained written permission from the district to be on the school grounds or upon other property posted with a notice that the property is used by a school. For the purposes of this section, "contacts the school district office" shall include mail, facsimile machine, or by computer using the internet. The provisions of this subsection are required for an individual who:

(i) Is dropping off or picking up a child or children and the person is the child or children's parent or legal guardian; or

(ii) Is attending an academic conference or other scheduled extracurricular school event with school officials present when the offender is a

parent or legal guardian of a child who is participating in the conference or extracurricular event. "Extracurricular" means any school-sponsored activity that is outside the regular curriculum, occurring during or outside regular school hours including, but not limited to, academic, artistic, athletic or recreational activities; or

(iii) Is temporarily on school grounds, during school hours, for the purpose of making a mail, food or other delivery.

(3) Nothing in this section shall prevent a school district from adopting more stringent safety and security requirements for employees and nonemployees while they are in district facilities and/or on district properties. If adopting more stringent safety and security requirements, the school district shall provide the requirements to any individual listed in subsection (2)(f)(i) through (iii) by mail, facsimile machine or by computer using the internet.

History.

I.C., § 18-8329, as added by 2006, ch. 354, § 1, p. 1084; am. 2008, ch. 250, § 1, p. 736; am. 2011, ch. 266, § 1, p. 725.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 250, rewrote the section to clarify the premises to which sex offender access is prohibited and when such access is prohibited.

The 2011 amendment, by ch. 266, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 2 of S.L. 2006, ch. 354 declared an emergency. Approved April 7, 2006.

RESEARCH REFERENCES

A.L.R. — Validity of statutes imposing residency restrictions on registered sex offenders. 25 A.L.R.6th 227.

Validity, construction, and application of statutory and municipal enactments and conditions of release prohibiting sex offenders from parks. 40 A.L.R.6th 419.

18-8330. [Reserved.]

18-8331. Adult criminal sex offenders — Prohibited group dwelling — Exceptions. — (1) Except as otherwise provided in this section, when a person is required to register pursuant to this chapter, that person may not reside in any residential dwelling unit with more than one (1) other person who is also required to register pursuant to this chapter. If, on the effective date of this section, any person required to register pursuant to this chapter, is legally residing in a residential dwelling unit with more than one (1) other person required to so register, the person may continue to reside in that residential dwelling unit without violating the provisions of this section, provided that no additional persons so required to register shall move into that residential dwelling unit if the person moving in would be in violation of this section.

(2) For purposes of this section:

(a) "Reside" and "residing" mean occupying the residential dwelling unit as a fixed place of abode or habitation for any period and to which place

the person has the intention of returning after a departure or absence therefrom regardless of the duration of absence.

(b) "Residential dwelling unit" includes, but is not limited to, single family dwellings and units in multifamily dwellings including units in duplexes, apartment dwellings, mobile homes, condominiums and townhouses in areas zoned as residential. For the purposes of this section a state or federally licensed health care or convalescent facility is not a residential dwelling unit.

(3)(a) A judge of the district court may, upon petition and after an appropriate hearing, authorize a person required to register pursuant to this chapter, to reside in a residential dwelling unit with more than one (1) other person who is also required to register pursuant to this chapter, if the judge determines that:

(i) Upon clear and convincing evidence that not doing so would deprive the petitioner of a constitutionally guaranteed right; and

(ii) That such right is more compelling under the facts of the case than is the interest of the state and local government in protecting neighboring citizens, including minors, from risk of physical or psychological harm. Such risk of harm shall be presumed absent clear and convincing evidence to the contrary given the applicant's status as a person required to register pursuant to this chapter;

(b) Any exception allowed under this section shall be limited to alleviate only a deprivation of constitutional right which is more compelling than the interest of the state and local government in minimizing the risk of harm to the neighboring citizens;

(c) Any order of exception under this section shall be made a part of the registry maintained pursuant to this chapter.

(4) Any city or county may establish standards for the establishment and operation of residential houses for registered sex offenders which exceed the number of registered sex offenders allowed to reside in a residential dwelling unit under subsection (1) of this section. Applicable standards shall include establishing procedures to allow comment of neighboring residents within a specified distance, and may include, but are not limited to:

(a) Designating permissible zones in which such houses may be located;

(b) Designating permissible distances between such houses;

(c) Designating the maximum number of registered sex offenders allowed to reside in such houses;

(d) Designating qualifications and standards for supervision and care of such houses and the residents;

(e) Designating requirements and procedures to qualify as the operator of such houses, including any requirement that the residents be engaged in treatment or support programs for sex offenders and related addiction treatment or support programs; and

(f) Designating any health and safety requirements which are different than those applicable to other residential dwelling units in the zone.

(5) No person or entity shall operate a residence house for registered sex offenders in violation of the limitations of subsection (1) of this section except as otherwise provided under subsection (4) of this section. If, on the

effective date of this section, any individual or entity is operating an existing residence house for persons required to register pursuant to this chapter, and when such individual or entity also requires such persons to be participants in a sex offender treatment or support program such individual or entity shall not be precluded from continuing to operate such residence house, provided that:

(a) The residence house shall not operate at a capacity exceeding eight (8) residents in the dwelling unit and two (2) residents per bedroom, or the existing number of residents, whichever is less;

(b) Once the governing city or county enacts an ordinance pursuant to subsection (4) of this section establishing standards for the operation of a residence house for sex offenders, the operator of the residence house shall, no later than one (1) year after enactment of the ordinance, comply with all standards of the ordinance, except any requirement that is less than the maximum capacity provided for under subsection (5)(a) of this section or which requires a relocation of the residence;

(c) The burden of proving that an existing residence house qualifies for continuing operation under this subsection shall be upon the operator of the residence house;

(d) Any change in the use of an existing residence house shall void the exception for the continuing operation of the house under the provisions of this section.

(6) If any person required to register pursuant to this chapter, is on parole or probation under the supervision of the Idaho department of correction, the department shall be notified by the person or the person's agent of any intent to reside with another person required to register under this chapter. The department must approve the living arrangement in advance as consistent with the terms of the parole or probation, and consistent with the objective of reducing the risk of recidivism. The department shall establish rules governing the application of this subsection.

(7) Any person who knowingly and with intent violates the provisions of this section is guilty of a misdemeanor.

(8) Any city or county is entitled to injunctive relief against any person or entity operating a residence house within its jurisdiction in violation of this section.

History.

I.C., § 18-8331, as added by 2008, ch. 124, § 1, p. 343.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2008, ch. 124 declared an emergency. Approved March 17, 2008.

CHAPTER 84

JUVENILE SEX OFFENDER REGISTRATION NOTIFICATION AND COMMUNITY RIGHT-TO-KNOW ACT

SECTION.
18-8409. Failure to register, penalties.

18-8401. Short title.

RESEARCH REFERENCES

A.L.R. — Validity and applicability of state requirement that person convicted or indicted of sex offenses be subject to electronic location monitoring, including use of satellite or global positioning system. 57 A.L.R.6th 1.

Validity of state sex offender registration laws under ex post facto prohibitions. 63 A.L.R.6th 351.

Validity, construction and application of state sex offender registration statutes concerning level of classification — General principles, evidentiary matters, and assistance of counsel. 64 A.L.R.6th 1.

Discharge from commitment and supervised release of civilly committed sex offender under state law. 78 A.L.R.6th 417.

18-8403. Definitions.

JUDICIAL DECISIONS

Cited in: Bradley v. State, 151 Idaho 629, 262 P.3d 272 (Ct. App. 2011).

18-8404. Juvenile sex offender registry.

RESEARCH REFERENCES

A.L.R. — State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Constitutional issues. 37 A.L.R.6th 55.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Duty to register, requirements for registration, and procedural matters. 38 A.L.R.6th 1.

State statutes or ordinances requiring persons previously convicted of crime to register with authorities as applied to juvenile offenders — Expungement, stay or deferral, exceptions, exemptions, and waiver. 39 A.L.R.6th 577.

Validity and applicability of state requirement that person convicted or indicted of sex offenses be subject to electronic location monitoring, including use of satellite or global positioning system. 57 A.L.R.6th 1.

Validity of state sex offender registration laws under ex post facto prohibitions. 63 A.L.R.6th 351.

Validity, construction and application of state sex offender registration statutes concerning level of classification — General principles, evidentiary matters, and assistance of counsel. 64 A.L.R.6th 1.

18-8409. Failure to register, penalties. — (1) A juvenile sex offender who fails to register or provide notification of a change of name or address is guilty of a misdemeanor.

(2) A parent of a juvenile sex offender commits the misdemeanor offense of failure to supervise a child if the offender fails to register or provide notification of a change of name or address as required by this section. A

person convicted of this offense is subject to a fine of not more than one thousand dollars ($1,000).

History.
I.C., § 18-8409, as added by 1998, ch. 412, p. 1298; am. 2012, ch. 257, § 4, p. 709.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 257, deleted "or guardian" following "A parent" at the beginning of subsection (2).

RESEARCH REFERENCES

A.L.R. — Admissibility of actuarial risk assessment testimony in proceeding to commit sex offender. 20 A.L.R.6th 607.

Validity, construction, and application of state statutes imposing criminal penalties for failure to register as required under sex offender or other criminal registration statutes. 33 A.L.R.6th 91.

18-8410. Transfer to adult registry.

JUDICIAL DECISIONS

ANALYSIS

Authority of magistrate judge.
Construction.

Authority of Magistrate Judge.
In the state's challenge to the trial court's vacation of the magistrate judge's order transferring defendant to the adult sex offender registry, as no objection to the magistrate judge's assignment was timely raised, the magistrate judge had the authority to consider the motion to transfer defendant under this section. State v. Jones, 141 Idaho 652, 115 P.3d 743 (2005).

Construction.
The plain language of this section does not require that the state file a petition to transfer a juvenile sex offender to the adult registry before the offender has reached the age of twenty-one. State v. Giovanelli, 152 Idaho 717, 274 P.3d 18 (Ct. App. 2012).

Cited in: Bradley v. State, 151 Idaho 629, 262 P.3d 272 (Ct. App. 2011).

CHAPTER 85

IDAHO CRIMINAL GANG ENFORCEMENT ACT

SECTION.
18-8501. Short title.
18-8502. Definitions.
18-8503. Punishment.
18-8504. Recruiting criminal gang members.
18-8505. Supplying firearms to a criminal gang.
18-8506. Adoption of local regulations.

18-8501. Short title. — This chapter shall be known and may be cited as the "Idaho Criminal Gang Enforcement Act."

History.
I.C., § 18-8501, as added by 2006, ch. 184, § 1, p. 582.

STATUTORY NOTES

Compiler's Notes.

Two 2006 acts, chapters 85 and 185, purported to create a new chapter 85 in Title 18. S.L. 2006, ch. 184 was compiled as Title 18, Chapter 85 (§§ 18-8501 to 18-8506), while S.L. 2006, ch. 85 was temporarily designated as Title 18, Chapter [86] 85 (§§ [18-8601] 18-8501 to [18-8605] 18-8505]). S.L. 2007, Chapter 90 made the temporary redesignation permanent.

Effective Dates.

Section 3 of S.L. 2006, ch. 184 declared an emergency. Approved March 24, 2006.

18-8502. Definitions. — As used in this chapter:

(1) "Criminal gang" means an ongoing organization, association, or group of three (3) or more persons, whether formal or informal, that has a common name or common identifying sign or symbol, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, having as one (1) of its primary activities the commission of one (1) or more of the criminal acts enumerated in subsection (3) of this section.

(2) "Criminal gang member" means any person who engages in a pattern of criminal gang activity and who meets two (2) or more of the following criteria:

(a) Admits to gang membership;

(b) Is identified as a gang member;

(c) Resides in or frequents a particular gang's area and adopts its style of dress, its use of hand signs, or its tattoos, and associates with known gang members;

(d) Has been arrested more than once in the company of identified gang members for offenses that are consistent with usual gang activity;

(e) Is identified as a gang member by physical evidence such as photographs or other documentation; or

(f) Has been stopped in the company of known gang members four (4) or more times.

(3) "Pattern of criminal gang activity" means the commission, attempted commission or solicitation of two (2) or more of the following offenses, provided that the offenses are committed on separate occasions or by two (2) or more gang members:

(a) Robbery, as provided in section 18-6501, Idaho Code;

(b) Arson, as provided in sections 18-801 through 18-804, Idaho Code;

(c) Burglary, as provided in sections 18-1401, 18-1403, 18-1405 and 18-1406, Idaho Code;

(d) Murder or manslaughter, as provided, respectively, in sections 18-4001 and 18-4006, Idaho Code;

(e) Any violation of the provisions of chapter 27, title 37, Idaho Code;

(f) Any unlawful use or possession of a weapon, bomb or destructive device pursuant to chapter 33, title 18, Idaho Code;

(g) Assault and battery, as provided in chapter 9, title 18, Idaho Code;

(h) Criminal solicitation, as provided in section 18-2001, Idaho Code;

(i) Computer crime, as provided in section 18-2202, Idaho Code;

(j) Theft, as provided in sections 18-2401 and 18-2403, Idaho Code;

(k) Evidence falsified or concealed and witnesses intimidated or bribed, as provided in sections 18-2601 through 18-2606, Idaho Code;

(*l*) Forgery and counterfeiting, as provided in sections 18-3601 through 18-3603 and sections 18-3605 through 18-3616, Idaho Code;
(m) Gambling, as provided in section 18-3802, Idaho Code;
(n) Kidnapping, as provided in sections 18-4501 through 18-4503, Idaho Code;
(o) Mayhem, as provided in section 18-5001, Idaho Code;
(p) Prostitution, as provided in sections 18-5601 through 18-5614, Idaho Code;
(q) Rape, as provided in sections 18-6101, 18-6108 and 18-6110, Idaho Code;
(r) Racketeering, as provided in section 18-7804, Idaho Code;
(s) Malicious harassment, as provided in section 18-7902, Idaho Code;
(t) Terrorism, as provided in section 18-8103, Idaho Code;
(u) Money laundering and illegal investment, as provided in section 18-8201, Idaho Code;
(v) Sexual abuse of a child under the age of sixteen years, as provided in section 18-1506, Idaho Code;
(w) Sexual exploitation of a child, as provided in section 18-1507, Idaho Code;
(x) Lewd conduct with minor child under sixteen, as provided in section 18-1508, Idaho Code;
(y) Sexual battery of a minor child sixteen or seventeen years of age, as provided in section 18-1508A, Idaho Code;
(z) Escape or rescue of prisoners, as provided in sections 18-2501 through 18-2506, Idaho Code;
(aa) Riot, as provided in sections 18-6401 and 18-6402, Idaho Code;
(bb) Disturbing the peace, as provided in section 18-6409, Idaho Code;
(cc) Malicious injury to property, as provided in section 18-7001, Idaho Code;
(dd) Injuring jails, as provided in section 18-7018, Idaho Code;
(ee) Injury by graffiti, as provided in section 18-7036, Idaho Code; or
(ff) Human trafficking, as provided in sections 18-8602 and 18-8603, Idaho Code.

History.
I.C., § 18-8502, as added by 2006, ch. 184, § 1, p. 582; am. 2011, ch. 188, § 1, p. 538.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 188, in paragraph (3)(e), deleted "that involves possession with intent to deliver, distribution, delivery or manufacturing of a substance prohibited therein" from the end; rewrote paragraph (3)(f), which formerly read: "Any unlawful use of a weapon that is a felony pursuant to chapter 33, title 18, Idaho Code"; and added paragraphs (3)(v) through (3)(ff).

Effective Dates.
Section 3 of S.L. 2006, ch. 184 declared an emergency. Approved March 24, 2006.

18-8503. Punishment. — (1) An adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, who is convicted of any felony or misdemeanor enumerated in section 18-8502(3), Idaho Code,

that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang or criminal gang member, in addition to the punishment provided for the commission of the underlying offense, shall be punished as follows:

(a) Any adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, who is convicted of a misdemeanor shall be punished by an additional term of imprisonment in the county jail for not more than one (1) year.

(b) Any adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, who is convicted of a felony shall be punished by an extended term of not less than two (2) years and not more than five (5) years in prison.

(c) If the underlying offense described in section 18-8502(3), Idaho Code, is a felony and committed on the grounds of, or within one thousand (1,000) feet of, a public or private elementary, secondary or vocational school during hours when the facility is open for classes or school-related programs or when minors are using the facility, the extended term shall be not less than two (2) years and not more than five (5) years in prison.

(2) This section does not create a separate offense but provides an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed facts.

(3) The court shall not impose an extended penalty pursuant to this section unless:

(a) The indictment, information, complaint or petition charging the defendant with the primary offense alleges that the primary offense was committed knowingly for the benefit or at the direction of, or in association with, a criminal gang or criminal gang member with the specific intent to promote, further or assist the activities of the criminal gang; and

(b) The trier of fact finds the allegation to be true beyond a reasonable doubt.

(4) Except in a case of a juvenile who has been waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, the imposition or execution of the sentences provided in this section may not be suspended.

(5) An extended sentence provided in this section shall run consecutively to the sentence provided for the underlying offense.

(6) Unless waived to adult court pursuant to section 20-508 or 20-509, Idaho Code, a juvenile who is adjudicated of any felony or misdemeanor enumerated in section 18-8502(3), Idaho Code, that is knowingly committed for the benefit or at the direction of, or in association with, any criminal gang or criminal gang member shall be sentenced according to the provisions of section 20-520, Idaho Code.

History.

I.C., § 18-8503, as added by 2006, ch. 184, § 1, p. 582; am. 2007, ch. 316, § 1, p. 943; am. 2011, ch. 188, § 2, p. 538; am. 2014, ch. 99, § 1, p. 293.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 316, rewrote the section catchline, which formerly read: "Extended sentence"; throughout subsection (1), substituted "Any adult, or any juvenile waived to adult court pursuant to section 20-508 or 20-509, Idaho Code" for "Any person," or similar language; added the exception in subsection (4); and added subsection (6).

The 2011 amendment, by ch. 188, in paragraph (1)(b), substituted "less" for "more" and inserted "and not more than five (5) years"; and, in paragraph (1)(c), substituted "two (2) years and not more than five (5) years in prison" for "one (1) year and not more than four (4) years."

The 2014 amendment, by ch. 99, substituted "information, complaint or petition charging the defendant" for "or information charging the defendant" in paragraph (3)(a).

Effective Dates.

Section 3 of S.L. 2006, ch. 184 declared an emergency. Approved March 24, 2006.

18-8504. Recruiting criminal gang members. — (1) A person commits the offense of recruiting criminal gang members by:

(a) Knowingly soliciting, inviting, encouraging or otherwise causing a person to actively participate in a criminal gang; or

(b) Knowingly using force, threats, violence or intimidation directed at any person, or by the infliction of bodily injury upon any person, to actively participate in a criminal gang.

(2) A person convicted of a violation of this section shall be imprisoned for a term not to exceed ten (10) years.

(3) This section shall not be construed to limit prosecution under any other provision of law.

History.

I.C., § 18-8504, as added by 2006, ch. 184, § 1, p. 582.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2006, ch. 184 declared an emergency. Approved March 24, 2006.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Elements.

Constitutionality.

The recruiting provision, paragraph (1)(a), does not overbroadly criminalize association, speech and expressive conduct in violation of the United States and Idaho constitutions. State v. Manzanares, 152 Idaho 410, 272 P.3d 382 (2012).

Elements.

In order to convict a defendant under paragraph (1)(a), the recruiting provision, the state must establish that there is a gang by proving (1) there is an ongoing organization, group or association (2) with a common name or sign (3) consisting of at least three members. Next, the state must prove that the gang is a "criminal gang". There are two criteria that must be met to show that a gang is a criminal gang. First, the state must prove that (4) members of the gang (5) individually or collectively committed, attempted to commit, or solicited at least two of the Idaho Criminal Gang Enforcement Act's enumerated offenses and that (6) the two enumerated offenses were committed either on separate occasions or by two or more gang members. Second, the state must prove that (7) the commission of one or more of the Idaho Criminal Gang Enforcement Act's enumerated criminal offenses is one of the gang's "primary

activities". State v. Manzanares, 152 Idaho 410, 272 P.3d 382 (2012).

To convict a defendant under paragraph (1)(a), after the state proves the existence of a criminal gang, the state must prove that the defendant (1) knew of the criminal gang and (2) knowingly solicited, invited, encouraged, or otherwise caused someone to "actively participate in" either (a) the criminal gang's commission of one of the Idaho Criminal Gang Enforcement Act's enumerated offenses or (b) in making it one of the criminal gang's "primary activities" to commit one or more of the Idaho Criminal Gang Enforcement Act's enumerated crimes. State v. Manzanares, 152 Idaho 410, 272 P.3d 382 (2012).

18-8505. Supplying firearms to a criminal gang. — (1) A person commits the offense of supplying firearms to a criminal gang if the person knows an individual is a gang member and supplies, sells or gives possession or control of any firearm to that gang member.

(2) Subsection (1) of this section shall not apply to a person who is convicted as a principal to the offense committed by the recipient of the firearm.

(3) A person convicted of a violation of this section shall be imprisoned for a term not to exceed ten (10) years or be fined an amount not to exceed fifty thousand dollars ($50,000), or both.

History.
I.C., § 18-8505, as added by 2006, ch. 184, § 1, p. 582.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2006, ch. 184 declared an emergency. Approved March 24, 2006.

18-8506. Adoption of local regulations. — This chapter does not prevent any county, city or other political subdivision from adopting and enforcing ordinances or resolutions consistent with this chapter relating to criminal gangs and criminal gang violations.

History.
I.C., § 18-8506, as added by 2006, ch. 184, § 1, p. 582.

STATUTORY NOTES

Effective Dates.
Section 3 of S.L. 2006, ch. 184 declared an emergency. Approved March 24, 2006.

CHAPTER 86

HUMAN TRAFFICKING

SECTION.
18-8601. Legislative intent.
18-8602. Human trafficking defined.
18-8603. Penalties.
18-8604. Restitution — Rehabilitation.
18-8605. Human trafficking victim protection.

18-8601. Legislative intent. — It is the intent of the legislature to

address the growing problem of human trafficking and to provide criminal sanctions for persons who engage in human trafficking in this state. In addition to the other provisions enumerated in this chapter, the legislature finds that it may also be appropriate for members of the law enforcement community to receive training from the respective training entities in order to increase awareness of possible human trafficking cases occurring in Idaho and to assist and direct victims of such trafficking to available community resources.

History.
I.C., § 18-8501, as added by 2006, ch. 85, § 1, p. 249; am. and redesig. 2007, ch. 90, § 4, p. 246.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 90, redesignated this section from § 18-8501.

Compiler's Notes.
Two 2006 acts, chapters 85 and 185, purported to create a new chapter 85 in Title 18. S.L. 2006, ch. 184 was compiled as Title 18, Chapter 85 (§§ 18-8501 to 18-8506), while S.L. 2006, ch. 85 was temporarily designated as Title 18, Chapter [86] 85 (§§ [18-8601] 18-8501 to [18-8605] 18-8505). S.L. 2007, Chapter 90 made the temporary redesignation permanent.

18-8602. Human trafficking defined. — "Human trafficking" means:

(1) Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

History.
I.C., § 18-8502, as added by 2006, ch. 85, § 1, p. 249; am. and redesig. 2007, ch. 90, § 5, p. 246.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 90, redesignated this section from § 18-8502.

18-8603. Penalties. — Notwithstanding any other law to the contrary, on and after July 1, 2006, any person who commits a crime as provided for in the following sections, and who, in the commission of such crime or crimes, also commits the crime of human trafficking, as defined in section 18-8602, Idaho Code, shall be punished by imprisonment in the state prison for not more than twenty-five (25) years unless a more severe penalty is otherwise prescribed by law: 18-905 (aggravated assault), 18-907 (aggravated battery), 18-909 (assault with intent to commit a serious felony), 18-911 (battery with intent to commit a serious felony), 18-913 (felonious administering of drugs), 18-1501(1) (felony injury to child), 18-1505(1) (felony injury to vulnerable adult), 18-1505(3) (felony exploitation of vulnerable adult), 18-1505B (sexual abuse and exploitation of vulnerable adult),

18-1506 (sexual abuse of a child under the age of sixteen years), 18-1506A (ritualized abuse of child), 18-1507 (sexual exploitation of child), 18-1508A (sexual battery of minor child sixteen or seventeen years of age), 18-1509A (enticing of children over the internet), 18-1511 (sale or barter of child), 18-2407(1) (grand theft), 18-5601 through 18-5614 (prostitution), or 18-7804 (racketeering).

History.
I.C., § 18-8503, as added by 2006, ch. 85, § 1, p. 249; am. and redesig. 2007, ch. 90, § 6, p. 246.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 90, redesignated this section from § 18-8503 and substituted "18-8602" for "18-8502" near the beginning.

18-8604. Restitution — Rehabilitation. — (1) In addition to any other amount of loss resulting from a human trafficking violation, the court shall order restitution, as applicable, including the greater of:

(a) The gross income or value to the defendant of the victim's labor or services; or

(b) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the federal fair labor standards act.

(2) In addition to any order for restitution as provided in this section, the court shall order the defendant to pay an amount determined by the court to be necessary for the mental and physical rehabilitation of the victim or victims.

History.
I.C., § 18-8504, as added by 2006, ch. 85, § 1, p. 249; am. and redesig. 2007, ch. 90, § 7, p. 246.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 90, redesignated this section from § 18-8504.

18-8605. Human trafficking victim protection. — (1) The attorney general, in consultation with the department of health and welfare and the United States attorney's office, shall, no later than July 1, 2007, issue a report outlining how existing victim and witness laws respond to the needs of human trafficking victims, and suggesting areas of improvement and modification.

(2) The department of health and welfare, in consultation with the attorney general, shall, no later than July 1, 2007, issue a report outlining how existing social service programs respond or fail to respond to the needs of human trafficking victims, and the interplay of such existing programs with federally-funded victim service programs, and suggesting areas of improvement or modification. Such inquiry shall include, but not be limited to, the ability of state programs and licensing bodies to recognize federal T nonimmigrant status for the purposes of benefits, programs and licenses.

History.
I.C., § 18-8505, as added by 2006, ch. 85, § 1, p. 249; am. and redesig. 2007, ch. 90, § 8, p. 246.

STATUTORY NOTES

Amendments.
The 2007 amendment, by ch. 90, redesignated this section from § 18-8505.